

No. 12544

United States
Court of Appeals
for the Ninth Circuit.

MATANUSKA VALLEY FARMERS COOPER-
ATING ASSOCIATION, a Corporation,

Appellant,

vs.

C. R. MONAGHAN,

Appellee.

Transcript of Record
In Two Volumes

Volume I
(Pages 1 to 334)

Appeal from the District Court,
Territory of Alaska,
Third Division

FILED

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PAUL P. O'BRIEN,
CLERK

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NO. 1111

County of ...
State of ...

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court for the Territory of Alaska,
Third Division

No. A-4252

C. R. MONAGHAN,

Plaintiff,

vs.

MATANUSKA VALLEY FARMERS COOPER-
ATING ASSOCIATION, a corporation,
Defendant.

COMPLAINT

Comes now the plaintiff in the above-entitled action and complaining against the defendant herein, for cause of action alleges:

I.

That the Matanuska Valley Farmers Cooperating Association, formerly known as Matanuska Valley Farmers Cooperative Association, is a corporation, organized and doing business under and by virtue of the laws of the Territory of Alaska, and was at all times hereinafter mentioned engaged in the business of buying, selling, handling and processing agricultural products on a cooperative basis with its stockholders and members, at or near Palmer, Alaska.

II.

That the plaintiff is and was at all times hereinafter mentioned a stockholder and member of the said Matanuska Valley Farmers cooperating Asso-

ciation and engaged in the dairy business near Palmer, Alaska, and during the period beginning December 1st, 1944, and ending November 30th, 1945, and for a long time prior thereto, sold his milk product to the said defendant under and according to the terms of a written contract theretofore entered into between plaintiff and defendant. A true copy of said contract, except that the signatures of plaintiff and defendant and the date thereof are omitted therefrom, is hereunto annexed, marked "Exhibit A," and made a part of this complaint.

III.

That in accordance with the provisions of paragraphs 5 and 6 of said contract, the defendant elected to and did, during all the period beginning December 1st, 1944, and ending November 30th, 1945, pool and co-mingle the milk sold and delivered by plaintiff to defendant, with the milk sold and delivered to defendant by other dairymen, who were during all of said period stockholders and members of the defendant corporation, and resold the said milk and milk products thereof as thus co-mingled.

IV.

That during the period beginning December 1st, 1944, and ending November 30th, 1945, plaintiff sold and delivered to defendant 119,488 lbs. of Grade A milk for which defendant promised and agreed to pay plaintiff according to the provisions of paragraphs 6 and 7 of the said contract, that is to say, an amount representing plaintiff's interest in all

milk and milk product resold by defendant with which plaintiff's milk was pooled and co-mingled, and the proceeds thereof, after making deductions to cover the items mentioned and stated in paragraph 7 of the said contract. That the defendant pooled and co-mingled the milk so as aforesaid sold and delivered to defendant by plaintiff, with the milk sold and delivered to defendant by others, and resold the same; that by reason of the premises there became due and owing to plaintiff from defendant on the day of , 1946, after deduction of the items stated in paragraph 7 of said contract, the sum of \$3,285.04.

That plaintiff has frequently demanded of defendant the payment of said sum, but defendant has failed, neglected and refused to pay the same or any part thereof and the same is still due, owing and unpaid together with interest according to law.

And for a Second Cause of Action, plaintiff alleges:

I.

That the Matanuska Valley Farmers Cooperating Association is a corporation, organized and doing business under and by virtue of the laws of the Territory of Alaska, and was at the times hereinafter mentioned engaged in the business of buying, selling, handling and processing agricultural products on a cooperative basis with its stockholders and members, at or near Palmer, Alaska.

II.

That one Frank McAllister is and was at all times

hereinafter mentioned a stockholder and member of the said Matanuska Valley Farmers Cooperating Association and engaged in the dairy business near Palmer, Alaska, and during the period beginning December 1st, 1944, and ending November 30th, 1945, and for a long time prior thereto, sold his milk product to the said defendant under and according to the terms of a written contract theretofore entered into between the said Frank McAllister and defendant. A true copy of said contract, except that the signatures of the said Frank McAllister and defendant are omitted therefrom, is hereunto annexed, marked "Exhibit A," and made a part of this complaint.

III.

That in accordance with the provision of paragraphs 5 and 6 of said contract, the defendant elected to and did, during all the period beginning December 1st, 1944, and ending November 30th, 1945, pool and co-mingle the milk sold and delivered by the said Frank McAllister to defendant, with the milk sold and delivered to defendant by other dairymen, who were during all of said period stockholders and members of the defendant corporation, and resold the said milk and milk products thereof as thus co-mingled.

IV.

That during the period beginning December 1st, 1944, and ending November 30th, 1945, the said Frank McAllister sold and delivered to defendant 168,842 lbs. of Grade A milk for which defendant

promised and agreed to pay the said Frank McAllister according to the provisions of paragraphs 6 and 7 of the said contract, that is to say, an amount representing the said Frank McAllister's interest in all milk and milk product resold by defendant with which the said Frank McAllister's milk was pooled and co-mingled, and the proceeds thereof, after making deductions to cover the items mentioned and stated in paragraph 7 of the said contract. That the defendant pooled and co-mingled the milk so as aforesaid sold and delivered to defendant by the said Frank McAllister, with the milk sold and delivered to defendant by others, and resold the same; that by reason of the premises there became due and owing to the said Frank McAllister from defendant on the day of, 1946, after deduction of the items stated in paragraph 7 of said contract, the sum of \$4,497.30.

V.

That heretofore and prior to commencement of this action, the said Frank McAllister, for a valuable consideration, assigned his aforesaid claim against the said defendant to this plaintiff, and plaintiff is now the owner and holder thereof.

That plaintiff has frequently demanded of defendant, the payment of the aforesaid sum of \$4,497.30, but said defendant has failed, neglected, and refused to pay the same or any part thereof, and the same is still due, owing, and unpaid, together with interest according to law.

And for a Third Cause of Action, plaintiff alleges:

I.

That the Matanuska Valley Farmers Cooperating Association is a corporation, organized and doing business under and by virtue of the laws of the Territory of Alaska, and was at the times hereinafter mentioned engaged in the business of buying, selling, handling and processing agricultural products on a cooperative basis with its stockholders and members, at or near Palmer, Alaska.

II.

That one Merle L. Anderson is and was at all times hereinafter mentioned a stockholder and member of the said Matanuska Valley Farmers Cooperating Association and engaged in the dairy business near Palmer, Alaska, and during the period beginning December 1st, 1944, and ending November 30th, 1945, and for a long time prior thereto, sold his milk product to the said defendant under and according to the terms of a written contract theretofore entered into between the said Merle L. Anderson and defendant. A true copy of said contract, except that the signatures of the said Merle L. Anderson and defendant are omitted therefrom, is hereunto annexed, marked "Exhibit A" and made a part of this complaint.

III.

That in accordance with the provision of paragraphs 5 and 6 of said contract, the defendant elected to and did, during all the period beginning

December 1st, 1944, and ending November 30th, 1945, pool and co-mingle the milk sold and delivered by the said Merle L. Anderson to defendant, with the milk sold and delivered to defendant by other dairymen, who were during all of said period stockholders and members of the defendant corporation, and resold the said milk and milk products thereof as thus co-mingled.

IV.

That during the period beginning December 1st, 1944, and ending November 30th, 1945, the said Merle L. Anderson sold and delivered to defendant 130,910 lbs. of Grade A milk and 8,657 lbs. of Grade B milk for which defendant promised and agreed to pay the said Merle L. Anderson according to the provisions of paragraphs 6 and 7 of the said contract, that is to say, an amount representing the said Merle L. Anderson's interest in all milk and milk product resold by defendant with which the said Merle L. Anderson's milk was pooled and co-mingled, and the proceeds thereof, after making deductions to cover the items mentioned and stated in paragraph 7 of the said contract. That the defendant pooled and co-mingled the milk so as aforesaid sold and delivered to defendant by the said Merle L. Anderson, with the milk sold and delivered to defendant by others, and resold the same; that by reason of the premises there became due and owing to the said Merle L. Anderson from defendant on the day of, 1946, after deduction of the items stated in paragraph 7 of said contract, the sum of \$3,969.78.

V.

That heretofore and prior to commencement of this action, the said Merle L. Anderson, for a valuable consideration, assigned his aforesaid claim against the said defendant to this plaintiff, and plaintiff is now the owner and holder thereof.

That plaintiff has frequently demanded of defendant, the payment of the aforesaid sum of \$3,-969.78, but said defendant has failed, neglected, and refused to pay the same or any part thereof, and the same is still due, owing, and unpaid, together with interest according to law.

And for a Fourth Cause of Action, plaintiff alleges:

I.

That the Matanuska Valley Farmers Cooperating Association is a corporation, organized and doing business under and by virtue of the laws of the Territory of Alaska, and was at the times hereinafter mentioned engaged in the business of buying, selling, handling and processing agricultural products on a cooperative basis with its stockholders and members, at or near Palmer, Alaska.

II.

That one A. A. Rempel is and was at all times hereinafter mentioned a stockholder and member of the said Matanuska Valley Farmers Cooperative Association and engaged in the dairy business near Palmer, Alaska, and during the period beginning December 1st, 1944, and ending November 30th, 1945, and for a long time prior thereto, sold his milk

product to the said defendant under and according to the terms of a written contract theretofore entered into between the said A. A. Rempel and defendant. A true copy of said contract, except that the signatures of the said A. A. Rempel and defendant are omitted therefrom, is hereunto annexed, marked "Exhibit A" and made a part of this complaint.

III.

That in accordance with the provision of paragraphs 5 and 6 of said contract, the defendant elected to and did, during all the period beginning December 1st, 1944, and ending November 30th, 1945, pool and co-mingle the milk sold and delivered by the said A. A. Rempel to defendant, with the milk sold and delivered to defendant by other dairymen, who were during all of said period stockholders and members of the defendant corporation, and resold the said milk and milk products thereof as thus co-mingled.

IV.

That during the period beginning December 1st, 1944, and ending November 30th, 1945, the said A. A. Rempel sold and delivered to defendant 48,925 lbs. of Grade A milk for which defendant promised and agreed to pay the said A. A. Rempel according to the provisions of paragraphs 6 and 7 of the said contract, that is to say, an amount representing the said A. A. Rempel's interest in all milk and milk product resold by defendant with which the said A. A. Rempel's milk was

pooled and co-mingled, and the proceeds thereof, after making deductions to cover the items mentioned and stated in paragraph 7 of the said contract. That the defendant pooled and co-mingled the milk so as aforesaid sold and delivered to defendant by the said A. A. Rempel, with the milk sold and delivered to defendant by others, and resold the same; that by reason of the premises there became due and owing to the said A. A. Rempel from the defendant on the day of, 1946, after deduction of the items stated in paragraph 7 of said contract, the sum of \$1,040.14.

V.

That heretofore and prior to commencement of this action, the said A. A. Rempel, for a valuable consideration, assigned his aforesaid claim against the said defendant to this plaintiff, and plaintiff is now the owner and holder thereof.

That plaintiff has frequently demanded of defendant, the payment of the aforesaid sum of \$1,040.14, but said defendant has failed, neglected, and refused to pay the same or any part thereof, and the same is still due, owing, and unpaid, together with interest according to law.

And for a Fifth Cause of Action, plaintiff alleges:

I.

That the Matanuska Valley Farmers Cooperating Association is a corporation, organized and doing business under and by virtue of the Laws of the

Territory of Alaska, and was at all time hereinafter mentioned engaged in the business of buying, selling, handling and processing agricultural products on a cooperative basis with its stockholders and members, at or near Palmer, Alaska.

II.

That one Arvid Johnson is and was at all times hereinafter mentioned a stockholder and member of the said Matanuska Valley Farmers Cooperating Association and engaged in the Dairy business near Palmer, Alaska, and during the period beginning December 1st, 1944, and ending November 30th, 1945, and for a long time prior thereto, sold his milk product to the said defendant under and according to the terms of a written contract theretofore entered into between the said Arvid Johnson and defendant. A true copy of said contract, except that the date thereof and the signatures of the parties thereto are omitted therefrom, is hereunto annexed, marked "Exhibit A," and made a part of this complaint.

III.

That in accordance with the provisions of paragraphs 5 and 6 of said contract, the defendant elected to and did, during all the period beginning December 1st, 1944, and ending November 30th, 1945, pool and co-mingle the milk sold and delivered by the said Arvid Johnson to defendant, with the milk sold and delivered to defendant by other dairymen, who were during all of said period

stockholders and members of the defendant corporation, and resold the said milk and milk products thereof as thus co-mingled.

IV.

That during the period beginning December 1st, 1944, and ending November 30th, 1945, the said Arvid Johnson sold and delivered to defendant 95,567 lbs. of Grade A milk, for which defendant promised and agreed to pay the said Arvid Johnson according to the provisions of paragraphs 6 and 7 of the said contract, that is to say, an amount representing the said Arvid Johnson's interest in all milk product resold by defendant with which the said Arvid Johnson's milk was pooled and co-mingled, and the proceeds thereof, after making deductions to cover the items mentioned and stated in paragraph 7 of the said contract. That the defendant pooled and co-mingled the milk so as aforesaid sold and delivered to defendant by the said Arvid Johnson, with the milk sold and delivered to defendant by others, and resold the same; that by reason of the premises there became due and owing to the said Arvid Johnson from the defendant on the day of , 1946, after deduction of the items stated in paragraph 7 of said contract, the sum of \$2,686.54.

V.

That heretofore and prior to commencement of this action, the said Arvid Johnson, for a valuable consideration, assigned his aforesaid claim against

the said defendant to this plaintiff, and plaintiff is now the owner and holder thereof.

That plaintiff has frequently demanded of defendant, the payment of the aforesaid sum of \$2,-686.54, but said defendant has failed, neglected, and refused to pay the same or any part thereof, and the same is still due, owing, and unpaid, together with interest according to law.

And for a Sixth Cause of Action, plaintiff alleges:

I.

That the Matanuska Valley Farmers Cooperating Association is a corporation, organized and doing business under and by virtue of the Laws of the Territory of Alaska, and was at all times hereinafter mentioned engaged in the business of buying, selling, handling and processing agricultural products on a cooperative basis with its stockholders and members, at or near Palmer, Alaska.

II.

That one Jack Cope is and was at all times hereinafter mentioned a stockholder and member of the said Matanuska Valley Farmers Cooperating Association and engaged in the dairy business near Palmer, Alaska, and during the period beginning December 1st, 1944, and ending November 30th, 1945, and for a long time prior thereto, sold his milk product to the said defendant under and according to the terms of a written contract theretofore entered into between the said Jack Cope and defendant. A true copy of said contract, except

that the date thereof and the signatures of the parties thereto are omitted therefrom, is hereunto annexed, marked "Exhibit A," and made a part of this complaint.

III.

That in accordance with the provisions of paragraphs 5 and 6 of said contract, the defendant elected to and did, during all the period beginning December 1st, 1944, and ending November 30th, 1945, pool and co-mingle the milk sold and delivered by the said Jack Cope to defendant, with the milk sold and delivered to defendant by other dairymen, who were during all of said period stockholders and members of the defendant corporation, and resold the said milk and milk products thereof as thus co-mingled.

IV.

That during the period beginning December 1st, 1944, and ending November 30th, 1945, the said Jack Cope sold and delivered to the defendant 67,321 lbs. of Grade A milk, for which defendant promised and agreed to pay the said Jack Cope according to the provisions of paragraphs 6 and 7 of the said contract, that is to say, an amount representing the said Jack Cope's interest in all milk product resold by defendant with which the said Jack Cope's milk was pooled and co-mingled, and the proceeds thereof, after making deductions to cover the items mentioned and stated in paragraph 7 of the said contract. That the defendant pooled and co-mingled the milk so as aforesaid

sold and delivered to defendant by the said Jack Cope, with the milk sold and delivered to defendant by others, and resold the same; that by reason of the premises there became due and owing to the said Jack Cope from the defendant on the day of, 1946, after deduction of the items stated in paragraph 7 of said contract, the sum of \$1,897.02.

V.

That heretofore and prior to commencement of this action, the said Jack Cope, for a valuable consideration, assigned his aforesaid claim against the said defendant to this plaintiff, and plaintiff is now the owner and holder thereof.

That plaintiff has frequently demanded of defendant, the payment of the aforesaid sum of \$1,897.02, but said defendant has failed, neglected, and refused to pay the same or any part thereof, and the same is still due, owing, and unpaid, together with interest according to law.

And for a Seventh Cause of Action, plaintiff alleges:

I.

That the Matanuska Valley Farmers Cooperating Association is a corporation, organized and doing business under and by virtue of the Laws of the Territory of Alaska, and was at all time hereinafter mentioned engaged in the business of buying, selling, handling and processing agricultural products on a cooperative basis with its stockholders and members, at or near Palmer, Alaska.

II.

That one William Ising is and was at all times hereinafter mentioned a stockholder and member of the said Matanuska Valley Farmers Cooperating Association and engaged in the dairy business near Palmer, Alaska, and during the period beginning December 1st, 1944, and ending November 30th, 1945, and for a long time prior thereto, sold his milk product to the said defendant under and according to the terms of a written contract theretofore entered into between the said William Ising and defendant. A true copy of said contract, except that the date thereof and the signatures of the parties thereto are omitted therefrom, is hereunto annexed, marked "Exhibit A," and made a part of this complaint.

III.

That in accordance with the provisions of paragraphs 5 and 6 of said contract, the defendant elected to and did, during all the period beginning December 1st, 1944, and ending November 30th, 1945, pool and co-mingle the milk sold and delivered by the said William Ising to defendant, with the milk sold and delivered to defendant by other dairymen, who were during all of said period stockholders and members of the defendant corporation, and resold the said milk and milk products thereof as thus co-mingled.

IV.

That during the period beginning December 1st, 1944, and ending November 30th, 1945, the said

William Ising sold and delivered to the defendant 85,157 lbs. of Grade A milk, for which defendant promised and agreed to pay the said William Ising according to the provisions of paragraphs 6 and 7 of the said contract, that is to say, an amount representing the said William Ising's interest in all milk product resold by defendant with which the said William Ising's milk was pooled and co-mingled, and the proceeds thereof, after making deductions to cover the items mentioned and stated in paragraph 7 of the said contract. That the defendant pooled and co-mingled the milk so as aforesaid sold and delivered to defendant by the said William Ising, with the milk sold and delivered to defendant by others, and resold the same; that by reason of the premises there became due and owing to the said William Ising from the defendant on the day of, 1946, after deduction of the items stated in paragraph 7 of said contract, the sum of \$2,356.84.

V.

That heretofore and prior to commencement of this action, the said William Ising, for a valuable consideration, assigned his aforesaid claim against the said defendant to this plaintiff, and plaintiff is now the owner and holder thereof.

That plaintiff has frequently demanded of defendant, the payment of the aforesaid sum of \$2,356.84, but said defendant has failed, neglected, and refused to pay the same or any part thereof, and the same is still due, owing, and unpaid, together with interest according to law.

And for an Eighth Cause of Action, plaintiff alleges:

I.

That the Matanuska Valley Farmers Cooperating Association is a corporation, organized and doing business under and by virtue of the Laws of the Territory of Alaska, and was at all times hereinafter mentioned engaged in the business of buying, selling, handling and processing agricultural products on a cooperative basis with its stockholders and members, at or near Palmer, Alaska.

II.

That one Joseph Lentz is and was at all times hereinafter mentioned a stockholder and member of the said Matanuska Valley Farmers Cooperating Association and engaged in the dairy business near Palmer, Alaska, and during the period beginning December 1st, 1944, and ending November 30th, 1945, and for a long time prior thereto, sold his milk product to the said defendant under and according to the terms of a written contract therefore entered into between the said Joseph Lentz and defendant. A true copy of said contract, except that the date thereof and the signatures of the parties thereto are omitted therefrom, is hereunto annexed, marked "Exhibit A," and made a part of this complaint.

III.

That in accordance with the provisions of paragraphs 5 and 6 of said contract, the defendant elected to and did, during all the period beginning

December 1st, 1944, and ending November 30th, 1945, pool and co-mingle the milk sold and delivered by the said Joseph Lentz to defendant, with the milk sold and delivered to defendant by other dairymen, who were during all of said period stockholders and members of the defendant corporation, and resold the said milk and milk products thereof as thus co-mingled.

IV.

That during the period beginning December 1st, 1944, and ending November 30th, 1945, the said Joseph Lentz sold and delivered to the defendant 42,856 lbs. of Grade A milk, for which defendant promised and agreed to pay the said Joseph Lentz according to the provisions of paragraphs 6 and 7 of the said contract, that is to say, an amount representing the said Joseph Lentz's interest in all milk product resold by defendant with which the said Joseph Lentz's milk was pooled and co-mingled, and the proceeds thereof, after making deductions to cover the items mentioned and stated in paragraph 7 of the said contract. That the defendant pooled and co-mingled the milk so as afore-said sold and delivered to defendant by the said Joseph Lentz, with the milk sold and delivered to defendant by others, and resold the same; that by reason of the premises there became due and owing to the said Joseph Lentz from the defendant on the day of, 1946, after deduction of the items stated in paragraph 7 of said contract, the sum of \$1,201.92.

V.

That heretofore and prior to commencement of this action, the said Joseph Lentz, for a valuable consideration, assigned his aforesaid claim against the said defendant to this plaintiff, and plaintiff is now the owner and holder thereof.

That plaintiff has frequently demanded of defendant, the payment of the aforesaid sum of \$1,-201.92, but said defendant has failed, neglected, and refused to pay the same or any part thereof, and the same is still due, owing, and unpaid, together with interest according to law.

And for a Ninth Cause of Action, plaintiff alleges:

I.

That the Matanuska Valley Farmers Cooperating Association is a corporation, organized and doing business under and by virtue of the Laws of the Territory of Alaska, and was at all times hereinafter mentioned engaged in the business of buying, selling, handling and processing agricultural products on a cooperative basis with its stockholders and members, at or near Palmer, Alaska.

II.

That one Clarence Quarnstrom is and was at all times hereinafter mentioned a stockholder and member of the said Matanuska Valley Farmers Cooperating Association and engaged in the dairy business near Palmer, Alaska, and during the period beginning December 1st, 1944, and ending November 30th, 1945, and for a long time prior thereto, sold his

milk product to the said defendant under and according to the terms of a written contract, therefore entered into between the said Clarence Quarnstrom and defendant. A true copy of said contract, except that the date thereof and the signatures of the parties thereto are omitted therefrom, is hereunto annexed, marked "Exhibit A," and made a part of this complaint.

III.

That in accordance with the provisions of paragraphs 5 and 6 of said contract, the defendant elected to and did, during all the period beginning December 1st, 1944, and ending November 30th, 1945, pool and co-mingle the milk sold and delivered by the said Clarence Quarnstrom to defendant, with the milk sold and delivered to defendant by other dairymen, who were during all of said period stockholders and members of the defendant corporation, and resold the said milk and milk products thereof as thus co-mingled.

That during the period beginning December 1st, 1944, and ending November 30th, 1945, the said Clarence Quarnstrom sold and delivered to the defendant 33,595 lbs. of Grade A milk, for which defendant promised and agreed to pay the said Clarence Quarnstrom according to the provisions of paragraphs 6 and 7 of the said contract, that is to say, an amount representing the said Clarence Quarnstrom's interest in all milk product resold by defendant with which the said Clarence Quarnstrom's milk was pooled and co-mingled, and the

proceeds thereof, after making deductions to cover the items mentioned and stated in paragraph 7 of the said contract. That the defendant pooled and co-mingled the milk so as aforesaid sold and delivered to defendant by the said Clarence Quarnstrom, with the milk sold and delivered to defendant by others, and resold the same; that by reason of the premises there became due and owing to the said Clarence Quarnstrom from the defendant on the day of, 1946, after deduction of the items stated in paragraph 7 of said contract, the sum of \$1,095.37.

V.

That heretofore and prior to commencement of this action, the said Clarence Quarnstrom, for a valuable consideration, assigned his aforesaid claim against the said defendant to this plaintiff, and plaintiff is now the owner and holder thereof.

That plaintiff has frequently demanded of defendant, the payment of the aforesaid sum of \$1,095.37, but said defendant has failed, neglected, and refused to pay the same or any part thereof, and the same is still due, owing, and unpaid, together with interest according to law.

And for a Tenth Cause of Action, plaintiff alleges:

I.

That the Matanuska Valley Farmers Cooperating Association is a corporation, organized and doing business under and by virtue of the Laws of the Territory of Alaska, and was at all times herein-

after mentioned engaged in the business of buying, selling, handling and processing agricultural products on a cooperative basis with its stockholders and members, at or near Palmer, Alaska.

II.

That one Thomas Moffit is and was at all times hereinafter mentioned a stockholder and member of the said Matanuska Valley Farmers Cooperating Association and engaged in the dairy business near Palmer, Alaska, and during the period beginning December 1st, 1944, and ending November 30th, 1945, and for a long time prior thereto, sold his milk product to the said defendant under and according to the terms of a written contract, theretofore entered into between the said Thomas Moffit and defendant. A true copy of said contract, except that the date thereof and the signatures of the parties thereto are omitted therefrom, is hereunto annexed, marked "Exhibit A," and made a part of this complaint.

III.

That in accordance with the provisions of paragraphs 5 and 6 of said contract, the defendant elected to and did, during all the period beginning December 1st, 1944, and ending November 30th, 1945, pool and co-mingle the milk sold and delivered by the said Thomas Moffit to defendant, with the milk sold and delivered to defendant by other dairy-men, who were during all of said period stockholders and members of the defendant corporation,

and resold the said milk and milk products thereof as thus co-mingled.

IV.

That during the period beginning December 1st, 1944, and ending November 30th, 1945, the said Thomas Moffit sold and delivered to the defendant 81,451 lbs. of Grade A milk and 1,601 lbs. of Grade B milk, for which defendant promised and agreed to pay the said Thomas Moffit according to the provisions of paragraphs 6 and 7 of the said contract, that is to say, an amount representing the said Thomas Moffit's interest in all milk product resold by defendant with which the said Thomas Moffit's milk was pooled and co-mingled, and the proceeds thereof, after making deductions to cover the items mentioned and stated in paragraph 7 of the said contract. That the defendant pooled and co-mingled the milk so as aforesaid sold and delivered to defendant by the said Thomas Moffit, with the milk sold and delivered to defendant by others, and resold the same; that by reason of the premises there became due and owing to the said Thomas Moffit from the defendant on the day of, 1946, after deduction of the items stated in paragraph 7 of said contract, the sum of \$2,274.08.

V.

That heretofore and prior to commencement of this action, the said Thomas Moffit, for a valuable consideration, assigned his aforesaid claim against

the said defendant to this plaintiff, and plaintiff is now the owner and holder thereof.

That plaintiff has frequently demanded of defendant, the payment of the aforesaid sum of \$2,274.08, but said defendant has failed, neglected, and refused to pay the same or any part thereof, and the same is still due, owing, and unpaid, together with interest according to law.

And for an Eleventh Cause of Action, plaintiff alleges:

I.

That the Matanuska Valley Farmers Cooperating Association is a corporation, organized and doing business under and by virtue of the Laws of the Territory of Alaska, and was at all times hereinafter mentioned engaged in the business of buying, selling, handling and processing agricultural products on a cooperative basis with its stockholders and members, at or near Palmer, Alaska.

II.

That one Paul Nelson is and was at all times hereinafter mentioned a stockholder and member of the said Matanuska Valley Farmers Cooperating Association and engaged in the dairy business near Palmer, Alaska, and during the period beginning December 1st, 1944, and ending November 30th, 1945, and for a long time prior thereto, sold his milk product to the said defendant under and according to the terms of a written contract, theretofore entered into between the said Paul Nelson

and defendant. A true copy of said contract, except that the date thereof and the signatures of the parties thereto are omitted therefrom, is hereunto annexed, marked "Exhibit A," and made a part of this complaint.

III.

That in accordance with the provisions of paragraphs 5 and 6 of said contract, the defendant elected to and did, during all the period beginning December 1st, 1944, and ending November 30th, 1945, pool and co-mingle the milk sold and delivered by the said Paul Nelson to defendant, with the milk sold and delivered to defendant by other dairymen, who were during all of said period stockholders and members of the defendant corporation, and resold the said milk and milk products thereof as thus co-mingled.

IV.

That during the period beginning December 1st, 1944, and ending November 30th, 1945, the said Paul Nelson sold and delivered to the defendant 36,170 lbs. of Grade B milk, for which defendant promised and agreed to pay the said Paul Nelson according to the provisions of paragraphs 6 and 7 of the said contract, that is to say, an amount representing the said Paul Nelson's interest in all milk product resold by defendant with which the said Paul Nelson's milk was pooled and co-mingled, and the proceeds thereof, after making deductions to cover the items mentioned and stated in paragraph 7 of the said contract. That the defendant pooled and co-mingled the milk so as aforesaid

sold and delivered to defendant by the said Paul Nelson, with the milk sold and delivered to defendant by others, and resold the same; that by reason of the premises there became due and owing to the said Paul Nelson from the defendant on the day of, 1946, after deduction of the items stated in paragraph 7 of said contract, the sum of \$822.57.

V.

That heretofore and prior to commencement of this action, the said Paul Nelson, for a valuable consideration, assigned his aforesaid claim against the said defendant to this plaintiff, and plaintiff is now the owner and holder thereof.

That plaintiff has frequently demanded of defendant, the payment of the aforesaid sum of \$822.57, but said defendant has failed, neglected, and refused to pay the same or any part thereof, and the same is still due, owing, and unpaid, together with interest according to law.

And for a Twelfth Cause of Action, plaintiff alleges:

I.

That the Matanuska Valley Farmers Cooperating Association is a corporation, organized and doing business under and by virtue of the laws of the Territory of Alaska, and was at all times hereinafter mentioned engaged in the business of buying, selling, handling and processing agricultural products on a cooperative basis with its stockholders and members, at or near Palmer, Alaska.

II.

That one B. J. Lossing is and was at all times hereinafter mentioned a stockholder and member of the said Matanuska Valley Farmers Cooperating Association and engaged in the dairy business near Palmer, Alaska, and during the period beginning December 1st, 1944, and ending November 30th, 1945, and for a long time prior thereto, sold his milk product to the said defendant under and according to the terms of a written contract, theretofore entered into between the said B. J. Lossing and defendant. A true copy of said contract, except that the date thereof and the signatures of the parties thereto are omitted therefrom, is hereunto annexed, marked "Exhibit A," and made a part of this complaint.

III.

That in accordance with the provisions of paragraphs 5 and 6 of said contract, the defendant elected to and did, during all the period beginning December 1st, 1944, and ending November 30th, 1945, pool and co-mingle the milk sold and delivered by the said B. J. Lossing to defendant, with the milk sold and delivered to defendant by other dairymen, who were during all of said period stockholders and members of the defendant corporation, and resold the said milk and milk products thereof as thus co-mingled.

IV.

That during the period beginning December 1st, 1944, and ending November 30th, 1945, the said

B. J. Lossing sold and delivered to the defendant 52,053 lbs. of Grade A milk, for which defendant promised and agreed to pay the said B. J. Lossing according to the provisions of paragraphs 6 and 7 of the said contract, that is to say, an amount representing the said B. J. Lossing's interest in all milk product resold by defendant with which the said B. J. Lossing's milk was pooled and co-mingled, and the proceeds thereof, after making deductions to cover the items mentioned and stated in paragraph 7 of the said contract. That the defendant pooled and co-mingled the milk so as aforesaid sold and delivered to defendant by the said B. J. Lossing, with the milk sold and delivered to defendant by others, and resold the same; that by reason of the premises there became due and owing to the said B. J. Lossing from the defendant on the day of, 1946, after deduction of the items stated in paragraph 7 of said contract, the sum of \$1,400.28.

V.

That heretofore and prior to commencement of this action, the said B. J. Lossing, for a valuable consideration, assigned his aforesaid claim against the said defendant to this plaintiff, and plaintiff is now the owner and holder thereof.

That plaintiff has frequently demanded of defendant, the payment of the aforesaid sum of \$1,400.28, but said defendant has failed, neglected, and refused to pay the same or any part thereof, and the same is still due, owing, and unpaid, together with interest according to law.

And for a Thirteenth Cause of Action, plaintiff alleges:

I.

That the Matanuska Valley Farmers Cooperating Association is a corporation, organized and doing business under and by virtue of the Laws of the Territory of Alaska, and was at all times hereinafter mentioned engaged in the business of buying, selling, handling and processing agricultural products on a cooperative basis with its stockholders and members, at or near Palmer, Alaska.

II.

That one Chet Liebing is and was at all times hereinafter mentioned a stockholder and member of the said Matanuska Valley Farmers Cooperating Association and engaged in the dairy business near Palmer, Alaska, and during the period beginning December 1st, 1944, and ending November 30th, 1945, and for a long time prior thereto, sold his milk product to the said defendant under and according to the terms of a written contract, theretofore entered into between the said Chet Liebing and defendant. A true copy of said contract, except that the date thereof and the signatures of the parties thereto are omitted therefrom, is hereunto annexed, marked "Exhibit A," and made a part of this complaint.

III.

That in accordance with the provisions of paragraphs 5 and 6 of said contract, the defendant elected to and did, during all the period beginning

December 1st, 1944, and ending November 30th, 1945, pool and co-mingle the milk sold and delivered by the said Chet Liebing to defendant, with the milk sold and delivered to defendant by other dairymen, who were during all of said period stockholders and members of the defendant corporation, and resold the said milk and milk products thereof as thus co-mingled.

IV.

That during the period beginning December 1st, 1944, and ending November 30th, 1945, the said Chet Liebing sold and delivered to the defendant 1,475 lbs. of Grade A milk and 36,557 lbs. of Grade B milk, for which defendant promised and agreed to pay the said Chet Liebing according to the provisions of paragraphs 6 and 7 of the said contract, that is to say, an amount representing the said Chet Liebing's interest in all milk product resold by defendant with which the said Chet Liebing's milk was pooled and co-mingled, and the proceeds thereof, after making deductions to cover the items mentioned and stated in paragraph 7 of the said contract. That the defendant pooled and co-mingled the milk so as aforesaid sold and delivered to defendant by the said Chet Liebing, with the milk sold and delivered to defendant by others, and resold the same; that by reason of the premises there became due and owing to the said Chet Liebing from the defendant on the day of, 1946, after deduction of the items stated in paragraph 7 of said contract, the sum of \$948.19.

V.

That heretofore and prior to commencement of this action, the said Chet Liebing, for a valuable consideration, assigned his aforesaid claim against the said defendant to this plaintiff, and plaintiff is now the owner and holder thereof.

That plaintiff has frequently demanded of defendant, the payment of the aforesaid sum of \$948.19, but said defendant has failed, neglected, and refused to pay the same or any part thereof, and the same is still due, owing, and unpaid, together with interest according to law.

And for a Fourteenth Cause of Action, plaintiff alleges:

I.

That the Matanuska Valley Farmers Cooperating Association is a corporation, organized and doing business under and by virtue of the Laws of the Territory of Alaska, and was at all times hereinafter mentioned engaged in the business of buying, selling, handling and processing agricultural product on a cooperative basis with its stockholders and members, at or near Palmer, Alaska.

II.

That one Alvin J. Collier is and was at all times hereinafter mentioned a stockholder and member of the said Matanuska Valley Farmers Cooperating Association and engaged in the dairy business near Palmer, Alaska, and during the period beginning December 1st, 1944, and ending November 30th,

December 1st, 1944, and ending November 30th, 1945, pool and co-mingle the milk sold and delivered by the said Chet Liebing to defendant, with the milk sold and delivered to defendant by other dairymen, who were during all of said period stockholders and members of the defendant corporation, and resold the said milk and milk products thereof as thus co-mingled.

IV.

That during the period beginning December 1st, 1944, and ending November 30th, 1945, the said Chet Leibing sold and delivered to the defendant 1,475 lbs. of Grade A milk and 36,557 lbs. of Grade B milk, for which defendant promised and agreed to pay the said Chet Liebing according to the provisions of paragraphs 6 and 7 of the said contract, that is to say, an amount representing the said Chet Liebing's interest in all milk product resold by defendant with which the said Chet Liebing's milk was pooled and co-mingled, and the proceeds thereof, after making deductions to cover the items mentioned and stated in paragraph 7 of the said contract. That the defendant pooled and co-mingled the milk so as aforesaid sold and delivered to defendant by the said Chet Liebing, with the milk sold and delivered to defendant by others, and resold the same; that by reason of the premises there became due and owing to the said Chet Liebing from the defendant on the day of , 1946, after deduction of the items stated in paragraph 7 of said contract, the sum of \$948.19.

V.

That heretofore and prior to commencement of this action, the said Chet Liebing, for a valuable consideration, assigned his aforesaid claim against the said defendant to this plaintiff, and plaintiff is now the owner and holder thereof.

That plaintiff has frequently demanded of defendant, the payment of the aforesaid sum of \$948.19, but said defendant has failed, neglected, and refused to pay the same or any part thereof, and the same is still due, owing, and unpaid, together with interest according to law.

And for a Fourteenth Cause of Action, plaintiff alleges:

I.

That the Matanuska Valley Farmers Cooperating Association is a corporation, organized and doing business under and by virtue of the Laws of the Territory of Alaska, and was at all times hereinafter mentioned engaged in the business of buying, selling, handling and processing agricultural product on a cooperative basis with its stockholders and members, at or near Palmer, Alaska.

II.

That one Alvin J. Collier is and was at all times hereinafter mentioned a stockholder and member of the said Matanuska Valley Farmers Cooperating Association and engaged in the dairy business near Palmer, Alaska, and during the period beginning December 1st, 1944, and ending November 30th,

1945, and for a long time prior thereto, sold his milk product to the said defendant under and according to the terms of a written contract, theretofore entered into between the said Alvin J. Collier and defendant. A true copy of said contract, except that the date thereof and the signatures of the parties thereto are omitted therefrom, is hereunto annexed, marked "Exhibit A," and made a part of this complaint.

III.

That in accordance with the provisions of paragraphs 5 and 6 of said contract, the defendant elected to and did, during all the period beginning December 1st, 1944, and ending November 30th, 1945, pool and co-mingle the milk sold and delivered by the said Alvin J. Collier to defendant, with the milk sold and delivered to defendant by other dairymen, who were during all of said period stockholders and members of the defendant corporation, and resold the said milk and milk products thereof as thus co-mingled.

IV.

That during the period beginning December 1st, 1944, and ending November 30th, 1945, the said Alvin J. Collier sold and delivered to the defendant 9,851 lbs. of Grade B milk, for which defendant promised and agreed to pay the said Alvin J. Collier according to the provisions of paragraphs 6 and 7 of the said contract, that is to say, an amount representing the said Alvin J. Collier's interest in all milk product resold by defendant with which the said

Alvin J. Collier's milk was pooled and co-mingled, and the proceeds thereof, after making deductions to cover the items mentioned and stated in paragraph 7 of the said contract. That the defendant pooled and co-mingled the milk so as aforesaid sold and delivered to defendant by the said Alvin J. Collier, with the milk sold and delivered to defendant by others, and resold the same; that by reason of the premises there became due and owing to the said Alvin J. Collier, from the defendant on the day of, 1946, after deduction of the items stated in paragraph 7 of said contract, the sum of \$238.06.

V.

That heretofore and prior to commencement of this action, the said Alvin J. Collier, for a valuable consideration, assigned his aforesaid claim against the said defendant to this plaintiff, and plaintiff is now the owner and holder thereof.

That plaintiff has frequently demanded of defendant, the payment of the aforesaid sum of \$238.06, but said defendant has failed, neglected, and refused to pay the same or any part thereof, and the same is still due, owing, and unpaid, together with interest according to law.

And for a Fifteenth Cause of Action, plaintiff alleges:

I.

That the Matanuska Valley Farmers Cooperating Association is a corporation, organized and doing

business under and by virtue of the Laws of the Territory of Alaska, and was at all times herein-after mentioned engaged in the business of buying, selling, handling and processing agricultural products on a cooperative basis with its stockholders and members, at or near Palmer, Alaska.

II.

That one William Lentz is and was at all times hereinafter mentioned a stockholder and member of the said Matanuska Valley Farmers Cooperating Association and engaged in the dairy business near Palmer, Alaska, and during the period beginning December 1st, 1944, and ending November 30th, 1945, and for a long time prior thereto, sold his milk product to the said defendant under and according to the terms of a written contract, theretofore entered into between the said William Lentz and defendant. A true copy of said contract, except that the date thereof and the signatures of the parties thereto are omitted therefrom, is hereunto annexed, marked "Exhibit A," and made a part of this complaint.

III.

That in accordance with the provisions of paragraphs 5 and 6 of said contract, the defendant elected to and did, during all the period beginning December 1st, 1944, and ending November 30th, 1945, pool and co-mingle the milk sold and delivered by the said William Lentz to defendant, with the milk sold and delivered to defendant by other dairy-men, who were during all of said period stockhold-

ers and members of the defendant corporation, and resold the said milk and milk products thereof as thus co-mingled.

IV.

That during the period beginning December 1st, 1944, and ending November 30th, 1945, the said William Lentz sold and delivered to the defendant 58,303 lbs. of Grade A milk and 4,219 lbs. of Grade B milk, for which defendant promised and agreed to pay the said William Lentz according to the provisions of paragraphs 6 and 7 of the said contract, that is to say, an amount representing the said William Lentz's interest in all milk product resold by defendant with which the said William Lentz's milk was pooled and co-mingled, and the proceeds thereof, after making deductions to cover the items mentioned and stated in paragraph 7 of the said contract. That the defendant pooled and co-mingled the milk so as aforesaid sold and delivered to defendant by the said William Lentz, with the milk sold and delivered to defendant by others, and resold the same; that by reason of the premises there became due and owing to the said William Lentz, from the defendant on the day of, 1946, after deduction of the items stated in paragraph 7 of said contract, the sum of \$1,711.25.

V.

That heretofore and prior to commencement of this action, the said William Lentz, for a valuable

consideration, assigned his aforesaid claim against the said defendant to this plaintiff, and plaintiff is now the owner and holder thereof.

That plaintiff has frequently demanded of defendant, the payment of the aforesaid sum of \$1,711.25, but said defendant has failed, neglected, and refused to pay the same or any part thereof, and the same is still due, owing, and unpaid, together with interest according to law.

And for a Sixteenth Cause of Action, plaintiff alleges:

I.

That the Matanuska Valley Farmers Cooperating Association is a corporation, organized and doing business under and by virtue of the Laws of the Territory of Alaska, and was at all times hereinafter mentioned engaged in the business of buying, selling, handling and processing agricultural products on a cooperative basis with its stockholders and members, at or near Palmer, Alaska.

II.

That one Henning Benson is and was at all times hereinafter mentioned a stockholder and member of the said Matanuska Valley Farmers Cooperating Association and engaged in the dairy business near Palmer, Alaska, and during the period beginning December 1st, 1944, and ending November 30th, 1945, and for a long time prior thereto, sold his milk product to the said defendant under and according to the terms of a written contract, thereto-

fore entered into between the said Henning Benson and defendant. A true copy of said contract, except that the date thereof and the signatures of the parties thereto are omitted therefrom, is hereunto annexed, marked "Exhibit A," and made a part of this complaint.

III.

That in accordance with the provisions of paragraphs 5 and 6 of said contract, the defendant elected to and did, during all the period beginning December 1st, 1944, and ending November 30th, 1945, pool and co-mingle the milk sold and delivered by the said Henning Benson to defendant, with the milk sold and delivered to defendant by other dairy-men, who were during all of said period stockholders and members of the defendant corporation, and resold the said milk and milk products thereof as thus co-mingled.

IV.

That during the period beginning December 1st, 1944, and ending November 30th, 1945, the said Henning Benson sold and delivered to the defendant 32,299 lbs. of Grade B milk, for which defendant promised and agreed to pay the said Henning Benson according to the provisions of paragraphs 6 and 7 of the said contract, that is to say, an amount representing the said Henning Benson's interest in all milk product resold by defendant with which the said Henning Benson's milk was pooled and co-mingled, and the proceeds thereof, after making deductions to cover the items mentioned and stated in paragraph 7 of the said contract. That the de-

fendant pooled and co-mingled the milk so as aforesaid sold and delivered to defendant by the said Henning Benson, with the milk sold and delivered to defendant by others, and resold the same; that by reason of the premises there became due and owing to the said Henning Benson, from the defendant on the day of , 1946, after deduction of the items stated in paragraph 7 of said contract, the sum of \$723.41.

V.

That heretofore and prior to commencement of this action, the said Henning Benson, for a valuable consideration, assigned his aforesaid claim against the said defendant to this plaintiff, and plaintiff is now the owner and holder thereof.

That plaintiff has frequently demanded of defendant, the payment of the aforesaid sum of \$723.41, but said defendant has failed, neglected, and refused to pay the same or any part thereof, and the same is still due, owing, and unpaid, together with interest according to law.

And for a Seventeenth Cause of Action, plaintiff alleges:

I.

That the Matanuska Valley Farmers Cooperating Association is a corporation, organized and doing business under and by virtue of the Laws of the Territory of Alaska, and was at all times hereinafter mentioned engaged in the business of buying, selling, handling and processing agricultural prod-

ucts on a cooperative basis with its stockholders and members, at or near Palmer, Alaska.

II.

That one Walter C. Huntley is and was at all times hereinafter mentioned a stockholder and member of the said Matanuska Valley Farmers Cooperating Association and engaged in the dairy business near Palmer, Alaska, and during the period beginning December 1st, 1944, and ending November 30th, 1945, and for a long time prior thereto, sold his milk product to the said defendant under and according to the terms of a written contract, theretofore entered into between the said Walter C. Huntley and defendant. A true copy of said contract, except that the date thereof and the signatures of the parties thereto are omitted therefrom, is hereunto annexed, marked "Exhibit A," and made a part of this complaint.

III.

That in accordance with the provisions of paragraphs 5 and 6 of said contract, the defendant elected to and did, during all the period beginning December 1st, 1944, and ending November 30th, 1945, pool and co-mingle the milk sold and delivered by the said Walter C. Huntley to defendant, with the milk sold and delivered to defendant by other dairymen, who were during all of said period stockholders and members of the defendant corporation, and resold the said milk and milk products thereof as thus co-mingled.

IV.

That during the period beginning December 1st, 1944, and ending November 30th, 1945, the said Walter C. Huntley sold and delivered to the defendant 32,236 lbs. of Grade A milk, for which defendant promised and agreed to pay the said Walter C. Huntley according to the provisions of paragraphs 6 and 7 of the said contract, that is to say, an amount representing the said Walter C. Huntley's interest in all milk product resold by defendant with which the said Walter C. Huntley's milk was pooled and co-mingled, and the proceeds thereof, making deductions to cover the items mentioned and stated in paragraph 7 of the said contract. That the defendant pooled and co-mingled the milk so as aforesaid sold and delivered to defendant by the said Walter C. Huntley, with the milk sold and delivered to defendant by others, and resold the same; that by reason of the premises there became due and owing to the said Walter C. Huntley, from the defendant on the day of
....., 1946, after deduction of the items stated in paragraph 7 of said contract, the sum of \$942.23.

V.

That heretofore and prior to commencement of this action, the said Walter C. Huntley, for a valuable consideration, assigned his aforesaid claim against the said defendant to this plaintiff, and plaintiff is now the owner and holder thereof.

That plaintiff has frequently demanded of de-

defendant, the payment of the aforesaid sum of \$942.23, but said defendant has failed, neglected, and refused to pay the same or any part thereof, and the same is still due, owing, and unpaid, together with interest according to law.

And for an Eighteenth Cause of Action, plaintiff alleges:

I.

That the Matanuska Valley Farmers Cooperating Association is a corporation, organized and doing business under and by virtue of the Laws of the Territory of Alaska, and was at all times hereinafter mentioned engaged in the business of buying, selling, handling and processing agricultural products on a cooperative basis with its stockholders and members, at or near Palmer, Alaska.

II.

That one Lawrence Plumley is and was at all times hereinafter mentioned a stockholder and member of the said Matanuska Valley Farmers Cooperating Association and engaged in the dairy business near Palmer, Alaska, and during the period beginning December 1st, 1944, and ending November 30th, 1945, and for a long time prior thereto, sold his milk product to the said defendant under and according to the terms of a written contract, theretofore entered into between the said Lawrence Plumley and defendant. A true copy of said contract, except that the date thereof and the signatures of the parties thereto are omitted therefrom, is hereunto annexed, marked "Exhibit A," and made a part of this complaint.

III.

That in accordance with the provisions of paragraphs 5 and 6 of said contract, the defendant elected to and did, during all the period beginning December 1st, 1944, and ending November 30th, 1945, pool and co-mingle the milk sold and delivered by the said Lawrence Plumley to defendant, with the milk sold and delivered to defendant by other dairymen, who were during all of said period stockholders and members of the defendant corporation, and resold the said milk and milk products thereof as thus co-mingled.

IV.

That during the period beginning December 1st, 1944, and ending November 30th, 1945, the said Lawrence Plumley sold and delivered to the defendant 15,790 lbs. of Grade A milk, for which defendant promised and agreed to pay the said Lawrence Plumley according to the provisions of paragraphs 6 and 7 of the said contract, that is to say, an amount representing the said Lawrence Plumley's interest in all milk product resold by defendant with which the said Lawrence Plumley's milk was pooled and co-mingled, and the proceeds thereof, after making deductions to cover the items mentioned and stated in paragraph 7 of the said contract. That the defendant pooled and co-mingled the milk so as aforesaid sold and delivered to defendant by the said Lawrence Plumley, with the milk sold and delivered to defendant by others, and resold the same; that by reason of the premises

there became due and owing to the said Lawrence Plumley, from the defendant on the day of, 1946, after deduction of the items stated in paragraph 7 of said contract, the sum of \$358.56.

V.

That heretofore and prior to commencement of this action, the said Lawrence Plumley, for a valuable consideration, assigned his aforesaid claim against the said defendant to this plaintiff, and plaintiff is now the owner and holder thereof.

That plaintiff has frequently demanded of defendant, the payment of the aforesaid sum of \$358.56, but said defendant has failed, neglected, and refused to pay the same or any part thereof, and the same is still due, owing, and unpaid, together with interest according to law.

And for a Nineteenth Cause of Action, plaintiff alleges:

I.

That the Matanuska Valley Farmers Cooperating Association is a corporation, organized and doing business under and by virtue of the Laws of the Territory of Alaska, and was at all times hereinafter mentioned engaged in the business of buying, selling, handling and processing agricultural products on a cooperative basis with its stockholders and members, at or near Palmer, Alaska.

II.

That one H. S. Bauer is and was at all times

hereinafter mentioned a stockholder and member of the said Matanuska Valley Farmers Cooperating Association and engaged in the dairy business near Palmer, Alaska, and during the period beginning December 1st, 1944, and ending November 30th, 1945, and for a long time prior thereto, sold his milk product to the said defendant under and according to the terms of a written contract, theretofore entered into between the said H. S. Bauer and defendant. A true copy of said contract, except that the date thereof and the signatures of the parties thereto are omitted therefrom, is hereunto annexed, marked "Exhibit A," and made a part of this complaint.

III.

That in accordance with the provisions of paragraphs 5 and 6 of said contract, the defendant elected to and did, during all the period beginning December 1st, 1944, and ending November 30th, 1945, pool and co-mingle the milk sold and delivered by the said H. S. Bauer to defendant, with the milk sold and delivered to defendant by other dairymen, who were during all of said period stockholders and members of the defendant corporation, and resold the said milk and milk products thereof as thus co-mingled.

IV.

That during the period beginning December 1st, 1944, and ending November 30th, 1945, the said H. S. Bauer sold and delivered to the defendant 6,196 lbs. of Grade B milk, for which defendant

promised and agreed to pay the said H. S. Bauer according to the provisions of paragraphs 6 and 7 of the said contract, that is to say, an amount representing the said H. S. Bauer's interest in all milk product resold by defendant with which the said H. S. Bauer's milk was pooled and co-mingled, and the proceeds thereof, after making deductions to cover the items mentioned and stated in paragraph 7 of the said contract. That the defendant pooled and co-mingled the milk so as aforesaid sold and delivered to defendant by the said H. S. Bauer, with the milk sold and delivered to defendant by others, and resold the same; that by reason of the premises there became due and owing to the said H. S. Bauer, from the defendant on the day of, 1946, after deduction of the items stated in paragraph 7 of said contract, the sum of \$147.69.

V.

That heretofore and prior to commencement of this action, the said H. S. Bauer, for a valuable consideration, assigned his aforesaid claim against the said defendant to this plaintiff, and plaintiff is now the owner and holder thereof.

That plaintiff has frequently demanded of defendant, the payment of the aforesaid sum of \$147.69, but said defendant has failed, neglected, and refused to pay the same or any part thereof, and the same is still due, owing, and unpaid, together with interest according to law.

And for a Twentieth Cause of Action, plaintiff alleges:

I.

That the Matanuska Valley Farmers Cooperating Association is a corporation organized and doing business under and by virtue of the Laws of the Territory of Alaska, and was at all times hereinafter mentioned engaged in the business of buying, selling, handling and processing agricultural products on a cooperative basis with its stockholders and members, at or near Palmer, Alaska.

II.

That one A. R. Moffitt is and was at all times hereinafter mentioned a stockholder and member of the said Matanuska Valley Farmers Cooperating Association and engaged in the dairy business near Palmer, Alaska, and during the period beginning December 1st, 1944, and ending November 30th, 1945, and for a long time prior thereto, sold his milk product to the said defendant under and according to the terms of a written contract, theretofore entered into between the said A. R. Moffitt and defendant. A true copy of said contract, except that the date thereof and the signatures of the parties thereto are omitted therefrom, is hereunto annexed, marked "Exhibit A," and made a part of this complaint.

III.

That in accordance with the provisions of paragraphs 5 and 6 of said contract, the defendant elected to and did, during all the period beginning

December 1st, 1944, and ending November 30th, 1945, pool and co-mingle the milk sold and delivered by the said A. R. Moffitt to defendant, with the milk sold and delivered to defendant by other dairymen, who were during all of said period stockholders and members of the defendant corporation, and resold the said milk and milk products thereof as thus co-mingled.

IV.

That during the period beginning December 1st, 1944, and ending November 30th, 1945, the said A. R. Moffitt sold and delivered to the defendant 63,949 lbs. of Grade A milk, for which defendant promised and agreed to pay the said A. R. Moffitt according to the provisions of paragraphs 6 and 7 of the said contract, that is to say, an amount representing the said A. R. Moffitt's interest in all milk product resold by defendant with which the said A. R. Moffitt's milk was pooled and co-mingled, and the proceeds thereof, after making deductions to cover the items mentioned and stated in paragraph 7 of the said contract. That the defendant pooled and co-mingled the milk so as aforesaid sold and delivered to defendant by the said A. R. Moffitt, with the milk sold and delivered to defendant by others, and resold the same; that by reason of the premises there became due and owing to the said A. R. Moffitt from the defendant on the day of, 1946, after deduction of the items stated in paragraph 7 of said contract, the sum of \$1,851.00.

the said Leonard Bergan's milk was pooled and co-mingled, and the proceeds thereof, after making deductions to cover the items mentioned and stated in paragraph 7 of the said contract. That the defendant pooled and co-mingled the milk so as aforesaid sold and delivered to defendant by the said Leonard Bergan, with the milk sold and delivered to defendant by others, and resold the same; that by reason of the premises there became due and owing to the said Leonard Bergan from the defendant on the .. day of, 1946, after deduction of the items stated in paragraph 7 of said contract, the sum of \$66.10.

V.

That heretofore and prior to commencement of this action, the said Leonard Bergan, for a valuable consideration, assigned his aforesaid claim against the said defendant to this plaintiff and plaintiff is now the owner and holder thereof.

That plaintiff has frequently demanded of defendant, the payment of the aforesaid sum of \$66.10, but said defendant has failed, neglected, and refused to pay the same or any part thereof, and the same is still due, owing, and unpaid, together with interest according to law.

And for a Twenty-Second Cause of Action, plaintiff alleges:

I.

That the Matanuska Valley Farmers Cooperating Association is a corporation organized and doing

business under and by virtue of the Laws of the Territory of Alaska, and was at all times hereinafter mentioned engaged in the business of buying, selling, handling and processing agricultural products on a cooperative basis with its stockholders and members, at or near Palmer, Alaska.

II.

That one Harold Thuma is and was at all times hereinafter mentioned a stockholder and member of the said Matanuska Valley Farmers Cooperating Association and engaged in the dairy business near Palmer, Alaska, and during the period beginning December 1st, 1944, and ending November 30th, 1945, and for a long time prior thereto, sold his milk product to the said defendant under and according to the terms of a written contract, theretofore entered into between the said Harold Thuma and defendant. A true copy of said contract, except that the date thereof and the signatures of the parties thereto are omitted therefrom, is hereunto annexed, marked "Exhibit A," and made a part of this complaint.

III.

That in accordance with the provisions of paragraphs 5 and 6 of said contract, the defendant elected to and did, during all the period beginning December 1st, 1944, and ending November 30th, 1945, pool and co-mingle the milk sold and delivered by the said Harold Thuma to defendant, with the milk sold and delivered to defendant by other dairy-

men, who were during all of said period stockholders and members of the defendant corporation, and resold the said milk and milk products thereof as thus co-mingled.

IV.

That during the period beginning December 1st, 1944, and ending November 30th, 1945, the said Harold Thuma sold and delivered to the defendant 23,004 lbs. of Grade B milk, for which defendant promised and agreed to pay the said Harold Thuma according to the provisions of paragraphs 6 and 7 of the said contract, that is to say, an amount representing the said Harold Thuma's interest in all milk product resold by defendant with which the said Harold Thuma's milk was pooled and co-mingled, and the proceeds thereof, after making deductions to cover the items mentioned and stated in paragraph 7 of the said contract. That the defendant pooled and co-mingled the milk so as aforesaid sold and delivered to defendant by the said Harold Thuma, with the milk sold and delivered to defendant by others, and resold the same; that by reason of the premises there became due and owing to the said Harold Thuma from the defendant on the .. day of, 1946, after deduction of the items stated in paragraph 7 of said contract the sum of \$551.86.

V.

That heretofore and prior to commencement of this action, the said Harold Thuma, for a valuable consideration, assigned his aforesaid claim against

the said defendant to this plaintiff and plaintiff is now the owner and holder thereof.

That plaintiff has frequently demanded of defendant, the payment of the aforesaid sum of \$551.86, but said defendant has failed, neglected, and refused to pay the same or any part thereof, and the same is still due, owing, and unpaid, together with interest according to law.

Wherefor, plaintiff demands judgment as follows:

On his first cause of action, for the sum of \$3,285.04, with interest thereon at the rate of 6% per annum from the .. day of, 1946.

On his second cause of action, for the sum of \$4,497.30, with interest thereon at the rate of 6% per annum from the .. day of, 1946.

On his third cause of action, for the sum of \$3,969.78, with interest thereon at the rate of 6% per annum from the .. day of, 1946.

On his fourth cause of action, for the sum of \$1,040.14, with interest thereon at the rate of 6% per annum from the .. day of, 1946.

On his fifth cause of action, for the sum of \$2,686.54, with interest thereon at the rate of 6% per annum from the .. day of, 1946.

On his sixth cause of action, for the sum of \$1,897.02, with interest thereon at the rate of 6% per annum from the .. day of, 1946.

On his seventh cause of action, for the sum of \$2,356.84, with interest thereon at the rate of 6% per annum from the .. day of, 1946.

On his eighth cause of action, for the sum of \$1,201.92, with interest thereon at the rate of 6% per annum from the .. day of, 1946.

On his ninth cause of action, for the sum of \$1,095.37, with interest thereon at the rate of 6% per annum from the .. day of, 1946.

On his tenth cause of action, for the sum of \$2,274.08, with interest thereon at the rate of 6% per annum from the .. day of, 1946.

On his eleventh cause of action, for the sum of \$822.57, with interest thereon at the rate of 6% per annum from the .. day of, 1946.

On his twelfth cause of action, for the sum of \$1,400.28, with interest thereon at the rate of 6% per annum from the .. day of, 1946.

On his thirteenth cause of action, for the sum of \$948.19, with interest thereon at the rate of 6% per annum from the .. day of, 1946.

On his fourteenth cause of action, for the sum of \$238.06, with interest thereon at the rate of 6% per annum from the .. day of, 1946.

On his fifteenth cause of action, for the sum of \$1,711.25, with interest thereon at the rate of 6% per annum from the .. day of, 1946.

On his sixteenth cause of action, for the sum of

\$723.41, with interest thereon at the rate of 6% per annum from the .. day of, 1946.

On his seventeenth cause of action, for the sum of \$942.23, with interest thereon at the rate of 6% per annum from the .. day of, 1946.

On his eighteenth cause of action for the sum of \$358.56, with interest thereon at the rate of 6% per annum from the .. day of, 1946.

On his nineteenth cause of action for the sum of \$147.69, with interest thereon at the rate of 6% per annum from this .. day of, 1946.

On his twentieth cause of action for the sum of \$1851.00 with interest thereon at the rate of 6% per annum from the .. day of, 1946.

On his twenty-first cause of action for the sum of \$66.10 with interest thereon at the rate of 6% per annum from the .. day of, 1946.

On his twenty-second cause of action for the sum of \$551.86 with interest thereon at the rate of 6% per annum from the .. day of, 1946.

And for his costs and disbursements herein.

/s/ GEORGE B. GRIGSBY,
Attorney for Plaintiff.

United States of America,
Territory of Alaska—ss.

George B. Grigsby being first duly sworn deposes and says: That he is the attorney for the plaintiff

in the above-entitled action, that he has read the foregoing complaint and knows the contents thereof and that the same is true as he verily believes. That this verification is made by affiant as attorney for the plaintiff and not by the plaintiff for the reason that plaintiff is not in Anchorage, Alaska, where this verification is made, at the time of the making thereof, but is at said time, and resides in or near Palmer, Alaska.

/s/ GEORGE B. GRIGSBY.

Subscribed and sworn to before me this 20th day of September, 1946.

[Seal] /s/ B. J. GROVER,
Notary Public in and for the
Territory of Alaska.

My Commission Expires March 25, 1948.

EXHIBIT A

MATANUSKA VALLEY FARMERS COOPERATIVE ASSOCIATION

Member's Standard Marketing Contract

This contract between Matanuska Valley Farmers Cooperative Association, hereinafter called the Association and the undersigned, hereinafter, called the Producer, Witnesseth:

Whereas, the Matanuska Valley Colonization Project has been established by the corporation in the Matanuska Valley of Alaska as a Rural Com-

munity by the aid of funds granted by the Government of the United States through the Federal Emergency Relief Administration in pursuance of public policy for the public purpose of assisting the Territory of Alaska in some of its rural rehabilitation problems and making it possible for worthy and qualified persons to acquire for themselves and families on suitable tracts of land in Alaska on small long time payment terms not procurable through ordinary commercial channels and thereby obtain employment and gainful living in agricultural and allied activities and enjoy the benefits of said Rural Community under properly controlled conditions on a cooperative basis in accordance with adequate standards of American citizenship; and

Whereas, this Association has been chartered by the Territory of Alaska under the sponsorship of the Alaska Rural Rehabilitation Corporation in order to assist in carrying said policies and purposes forward for the public welfare and for the benefit of those living in the area of said Project and the neighborhood thereof, and the Alaska Rural Rehabilitation Corporation has by separate contract with the Association agreed to lend it financial assistance, afford it adequate physical facilities and act as its Management and Sales Agency and otherwise assist the Association to successfully conduct its operations for the benefit of its members until it is self supporting and able to carry on its affairs with its own resources and

Whereas, the Producer is engaged in the pro-

duction of agricultural products in said area and desires the benefits of membership in the Association;

Now Therefore, in consideration of the above-premises and the mutual covenants herein contained It Is Agreed as Follows:

(1) The Producer hereby subscribes for one share of stock in the Association at five (5.00) dollars, its par value, and agrees to be governed by the Articles of Incorporation of the Association, its By-laws and all rules, regulations, and directions from time to time prescribed by the Association or its duly authorized officers and agencies covering production, marketing and sale of agricultural products and purchase of supplies, commodities and services on a cooperative basis and other cooperative activities, and by so doing and by entering into this Contract hereby becomes a member of the Association.

(2) The Association buys and the Producer sells to the Association all agricultural products produced or raised by or for him or acquired by him as landlord or lessor, except such as he reserves for his own home, farm or other personal use and which is not for sale, and agrees to deliver the same in marketable condition at such times and places and with such markings of identification as the Association or its Management and Sales Agency shall direct. This Contract is intended by the parties hereto to pass an absolute title to all said agricultural products as soon as the same have a potential existence, but they shall be at the risk of the Pro-

ducer until delivery hereunder, except dairy products and except livestock accepted for resale, and title to these does not pass until delivery thereof hereunder. The Association has the legal power and is hereby authorized by the Producer, at its discretion, at any time it deems it necessary in order to protect its rights, under the title which passes hereby as aforesaid, to enter the premises where said agricultural products are produced, grown or located and deal with the same as its own in every respect. The Association, by a statement in writing only, may authorize the Producer to sell or dispose of the agricultural products covered by said written statement outside of the Association at any time and for such period of time as conditions are such that in the judgment of the Association the handling of said products would not be advantageous to the Association or the Producer and provide in the same written statement for the non-acceptance of delivery of said products by the Association or its Management and Sales Agency.

(3) It is mutually agreed that the term "agricultural products" as used herein includes horticultural, viticultural, forestry, dairy, poultry, bee and farm and ranch products and also includes such livestock raised for the market as the Association accepts for resale.

(4) The Association agrees that upon delivery of agricultural products hereunder it may make or cause to be made through its Management and

Sales Agency such requested advances to the Producer on said products as in its discretion may be justified by the Producer's immediate needs and by marketing conditions.

(5) The Association agrees to receive, handle by inspecting, assembling, sorting, grading, packing, preserving, canning or otherwise processing, storing, advertising, transporting and other services necessary to prepare for market and sale and to market and resell agricultural products delivered hereunder, together with like products delivered by other members either separately or co-mingled or pooled at its discretion and to pay therefor as set forth in this Contract or cause the same to be done through its Management and Sales Agency.

(6) Producer agrees that the Association may establish or cause to be established through its Management and Sales Agency daily, weekly, monthly, seasonal, yearly, and/or other pools by grades of any agricultural products received from its members and may co-mingle or pool any of the products delivered hereunder with other like products delivered by others or cause same to be done and remit or cause to be remitted to the Producer and other producers concerned, on the basis of the interest of each one therein, as payments in full for the products delivered by them and sold in said pool, the net average price received therefor after making the deductions provided for in this Contract with the object of causing all members whose products are sold therein to receive the same price for products of the same grade.

(7) The Association agrees to pay or cause to be paid through its Management and Sales Agency to the Producer the amounts received for the said resale of said products sold separately or the amounts representing Producer's interest in products resold wherein his products are pooled or co-mingled with others as provided for in Paragraph 6 herein after making deductions to cover the following items in connection therewith: (a) repayment of advances made to Producer under Paragraph 4 of this Contract and interest on said advances; (b) reasonable charges for the services of receiving, handling and selling said agricultural products under Paragraph 5 of this Contract; (c) operating and maintenance expenses; (d) one dollar each year in payment of the official publication of the Association in case said publication is issued; (e) two per centum (2%) of the gross sales price received for the products of said member sold separately or of the amounts representing said member's interest in products sold wherein his products are pooled or co-mingled with others as funds belonging to the Association to meet its indebtedness and additional expenses, contribute to the Association's reserves (with which to acquire ownership of industries and enterprises and property in connection therewith and for other proper purposes), to pay interest on capital stock by way of dividends and for other proper purposes as provided for by the laws of Alaska pertaining to "Cooperative Associations" under which the Asso-

ciation has been incorporated and by the By-laws of the Association.

(8) The Association is hereby authorized to process or manufacture into changed or new products the products delivered hereunder and pay the Producer as provided for in Paragraph 7, from the proceeds from resale of the changed or new products or at its discretion to pay a flat delivery price therefor to the Producer as full payment thereof and thereafter process or manufacture it into changed or new products on its own account and at its own expense as its own product and sell and retain the full proceeds thereof as amounts belonging to the Association.

(9) The Association shall make or cause to be made through its Management and Sales Agency rules and regulations and provisions for inspectors or graders to inspect and to standardize and grade agricultural products and the methods of handling and shipping the same and the Producer agrees to accept and abide by any such rules and regulations and the inspection, grading and standardizing thus established, and that if any such agricultural products are not in proper condition for sale they shall be sorted and prepared for sale at the expense of the Producer, and if not marketable they may be rejected, and that any loss on account of inferior or damaged condition at delivery shall be charged against the Producer, individually.

(10) The Association is hereby authorized to

borrow money on the products delivered hereunder, and/or the by-products derived therefrom, and/or on any evidence of such products or by-products of amounts receivable arising therefrom and to pledge the same as the absolute owner thereof.

(11) The Producer agrees to purchase from the industries and enterprises operated by the Association or operated through its Management and Sales Agency all services and commodities needed by him including supplies, equipment and machinery, and not to purchase any of same elsewhere, except when the same are not for sale thereat and then not until first requesting the Association or its Management and Sales Agency to order the same and it being found by it impractical to do so and he so notified.

(12) The Association agrees that there shall be returned to Producer from the retail price received from him on all cash purchases semi-annually during the year of 1936 and and semi-annually every year thereafter as a patronage-purchase-savings the sum remaining after deducting from said retail price in connection with said cash purchases amounts to cover (a) cost to the Association of services or commodities purchased by the Producer; (b) reasonable charges for services of handling said services or commodities; (c) operating and maintenance expenses; (d) one-half of the amount remaining as funds belonging to the Association for Association obligations and reserve purposes as set forth in item (e) of deductions under Paragraph 7 herein

(except patronage-sales-refunds which are not paid hereunder; it being understood that the term "cash" as used herein includes payment in kind or toll or representation of cash by coupon, "bingle" or other symbol or device which has been paid for in cash by the Producer when duly authorized by the Association.

(13) The Association is hereby authorized by the Producer to add or cause to be added to the deductions listed in Paragraphs 7, 8 and 12 herein deductions of any amounts due the Association under the obligations of any of the paragraphs of this Contract or otherwise and to retain the same for payment thereof, but the failure of the Association to do so shall not be construed as a waiver of said obligations or said amounts due or the right of the Association to collect and receive the same by other measures.

(14) It is mutually understood that under cooperative principles the chief benefits to members of a cooperative association come from cooperative purchases on a cash basis in the form of reasonable prices and patronage-purchase-savings and that the expense of conducting business on a credit basis leaves no room for said savings and the By-laws prohibit patronage-purchase-savings on credit transactions and they will not be paid. It is also mutually understood that under the By-laws of the Association it is the policy of the Association to transact all cooperative purchase business on a cash basis to the fullest extent possible and to extend the

cash system as rapidly as possible over all said transactions and give all members of the Association the full benefit of patronage-purchase-savings thereunder and that credit purchases will be limited to purchases especially permitted by the Association where the situation, need and security justify it in cases of the more expensive commodities including heavy farm machinery, livestock, etc., and on no account will credit be extended for the purchase of non-necessities or luxuries. The Producer agrees to limit his requests for credit purposes to said situations and to neither make credit nor cash purchases elsewhere than from the Association industries and enterprises as provided for in Paragraph 11 hereof.

(15) Inasmuch as the remedy at law would be inadequate and inasmuch as it would be impracticable and extremely difficult to determine the actual damage resulting to the Association should the Producer fail to sell to or through the Association and its agencies and deliver his agricultural products accordingly or make his purchases of services and commodities therefrom as herein agreed to regardless of the cause of such failures, the Producer hereby agrees to pay to the Association for all agricultural products delivered or disposed of, by or for him, other than in accordance with the terms of this Contract, a sum equal to ten per cent of the price he received for the sale of said products and to suffer as a penalty for purchasing services or commodities outside of the Association in

breach of this Contract the cutting down of the amount of patronage-purchase-savings otherwise due him or the abolishment of the same altogether to such extent and for such periods of time as the Board of Directors may determine and the retention of said amounts by the Association as funds belonging to the Association, said penalties to serve as liquidated damages for breach of this Contract; all parties agreeing that this Contract is one of a series dependent for its true value upon the adherence of each and all of the contracting parties to each and all of the said contracts, but the cancellation of this Contract or the failure of Producer to comply therewith shall not effect other similar contracts; Provided that the power to assess said penalties or assessments thereof shall not preclude the Association from applying other measures for the protection of the Association and its members which are provided for by the By-laws and rules thereunder including suspension from membership from the Association.

(16) The Producer's obligations hereunder will be enforced in the courts by specific performance and injunction and the Producer agrees that if the Association brings any action whatsoever by reason of a breach or threatened breach hereof, the Producer shall pay all costs of court, costs for bonds and otherwise, expenses of travel and all expenses arising out of or caused by the litigation, and reasonable attorney fees expended or incurred by it in such proceedings and all such costs and expenses shall be included in the judgment.

(17) If there is a lien on any of the agricultural products delivered hereunder, Producer authorizes the Association to pay or cause to be paid through its Management and Sales Agency the holder of said lien from the sale of such agricultural products before any payment is made to Producer hereunder.

(18) In view of the common purpose of the Association and the Alaska Rural Rehabilitation Corporation as set forth on page 1 of this Contract in promoting gainful agricultural activities on the land and allied activities on the part of members of this Association and the Association's obligations to coordinate its efforts for the same objective with those of said Corporation as provided for in the Articles of Incorporation and By-laws of the Association the Producer agrees that while occupying a home financed by said Corporation on government or other land or while occupying homes on patented land under contract of land and home purchase from said Corporation or otherwise he will abide by all rules and regulations of said Corporation concerning the use of said lands for agricultural purposes.

(9) It is mutually understood that this Contract shall remain in full force and effect continuously hereafter, subject to legal limitations, if any, and cannot be altered or amended except upon authority of or vote of two thirds of all the members of the Association at an annual meeting or a special meeting of members called to consider the same after a

fifteen days notice in writing of the exact alterations or amendments proposed sent to the Producer and each member of the Association by the Secretary of the Association upon order of the Board of Directors of the Association upon petition of one-third of the members containing said proposed alterations or amendments and that no alteration or amendment can be made affecting uncompleted sales or transactions arising under this Contract or the Association's Contract with the Alaska Rural Rehabilitation Corporation referred to on Page 1 of this Contract or any of the Association's outstanding contracts with other third parties without their written consent duly authorized.

(20) The parties agree that there are no oral or other conditions, promises, covenants, representations, or inducements in addition to or at variance with any terms hereof and that this Contract represents the voluntary and clear understanding of both parties fully and completed.

(21) Misrepresentation on the part of any member of the Association or other person of the financial condition or standing of the Association or any attempts to induce any member of the Association to breach or violate the Member's Standard Marketing Contract (of which this is one) is in violation of the laws of Alaska and the Association reserves the right to protect the Association and its members by taking proper legal steps and measures should such violations occur.

(22) It is mutually agreed by the parties hereto that this Contract is binding on the successors and the assigns of the Association and that the obligations incurred by the Producer hereunder are binding upon his heirs, executors, administrators and assigns, provided however, that the Producer cannot assign this Contract or any of his interests therein without the consent of the Association. It is further mutually agreed that this Contract is subject to any Federal, State or Territorial laws now existing or which may be hereafter enacted.

Dated this day of, 19.....

.....

(Producer)

Post Office Address.....

MATANUSKA VALLEY FARMERS COOPERATIVE ASSOCIATION

By

(President)

[Seal]

Attest:

.....

(Secretary)

Acknowledgment

(Of the Producer)

United States of America,
Territory of Alaska—ss.

Be It Remembered, that on this day of, 19....., personally appeared

before me, the undersigned, a Notary Public, within and for the Territory of Alaska aforesaid.....
and being *just* duly sworn, stated that he is the person who signed the foregoing instrument and acknowledged the same to be executed by his free and voluntary act for the considerations, uses, and purposes therein provided, and that the facts therein stated are truly set forth.

In Testimony Whereof, I have hereunto set my hand and official seal this day and date above-written.

.....
 (Notary Public)

Acknowledgment
 (Of the Association)

United States of America,
 Territory of Alaska—ss.

On this day of, 19...., personally appeared before me, the undersigned, a Notary Public, within and for the Territory of Alaska aforesaid.....and
and being first duly sworn stated that they are the President and Secretary of the Matanuska Valley Cooperative Association, and were duly authorized in these respective capacities to execute the foregoing instrument for and in the name and behalf of said corporation and further stated and acknowledged that in pursuance of said authority they signed, executed and

delivered said foregoing instrument for the considerations, uses and purposes therein mentioned and set forth.

In Testimony Whereof, I have hereunto set my hand and official seal this day and date above-written.

.....

(Notary Public)

[Endorsed]: Filed September 20, 1946.



[Title of District Court and Cause.]

ANSWER

Comes now the Matanuska Valley Farmers Cooperating Association, a corporation, the above-named defendant, and by way of Answer to the first cause of plaintiff's Complaint admits, denies and alleges as follows:

I.

Defendant admits the allegations of the first and second paragraphs of plaintiff's first cause of action.

II.

Defendant denies each and all the allegations of the third paragraph of plaintiff's first cause of action except that defendant admits that milk sold and delivered by the plaintiff to the defendant was co-mingled with milk sold and delivered to the

defendant by other dairymen and that such other dairymen were stockholders and members of the defendant corporation.

III.

Defendant denies each and all of the allegations of the fourth paragraph of plaintiff's first cause of action save and except that defendant admits that during the period beginning December 1, 1944, and ending November 30, 1945, plaintiff sold and delivered to defendant 119,488 pounds of Grade A milk, that the defendant co-mingled the milk delivered by the plaintiff with other milk delivered by others.

As a further answer to plaintiff's first cause of action and by way of affirmative defense thereto defendant alleges as follows:

I.

That the milk sold and delivered by the plaintiff to the defendant between December 1, 1944 and November 30, 1945, was purchased by the defendant at a fixed price per hundred pounds of milk delivered, which price varied from time to time during the year and that the plaintiff has been paid in full by the defendant for all milk so purchased.

II.

That after making the deductions authorized by paragraphs 7, 8 and 12 of the marketing agreement the plaintiff has been fully paid by the defendant for all milk sold and delivered to the defendant by the plaintiff.

In answer to plaintiff's Second Cause of Action the defendant admits, denies and alleges as follows:

I.

Defendant admits the allegations of the first and second paragraphs of plaintiff's second cause of action.

II.

Defendant denies each and all the allegations of the third paragraph of plaintiff's second cause of action except that defendant admits that milk sold and delivered by Frank McAllister to the defendant was co-mingled with milk sold and delivered to the defendant by other dairymen and that such other dairymen were stockholders and members of the defendant corporation.

III.

Defendant denies each and all of the allegations of the fourth paragraph of plaintiff's second cause of action save and except that defendant admits that during the period beginning December 1, 1944, and ending November 30, 1945, Frank McAllister sold and delivered to defendant 168,842 pounds of Grade A milk, that the defendant co-mingled the milk delivered by Frank McAllister with other milk delivered by others.

IV.

That defendant has no knowledge or information sufficient to form a belief concerning the fifth paragraph of plaintiff's second cause of action and therefore denies the allegations thereof.

As a further answer to plaintiff's second cause of action and by way of affirmative defense there-to defendant alleges as follows:

I.

That the milk sold and delivered by Frank McAllister to the defendant between December 1, 1944, and November 30, 1945, was purchased by the defendant at a fixed price per hundred pounds of milk delivered, which price varied from time to time during the year and that Frank McAllister has been paid in full by the defendant for all milk so purchased.

II.

That after making the deductions authorized by paragraphs 7, 8 and 12 of the marketing agreement Frank McAllister has been fully paid by the defendant for all milk sold and delivered to the defendant by Frank McAllister.

In answer to plaintiff's Third Cause of Action the defendant admits, denies and alleges as follows:

I.

Defendant admits the allegations of the first and second paragraphs of plaintiff's third cause of action.

II.

Defendant denies each and all the allegations of the third paragraph of plaintiff's third cause of action except that defendant admits that milk sold and delivered by Merle L. Anderson to the de-

fendant was co-mingled with milk sold and delivered to the defendant by other dairymen and that such other dairymen were stockholders and members of the defendant corporation.

III.

Defendant denies each and all of the allegations of the fourth paragraph of plaintiff's third cause of action save and except that defendant admits that during the period beginning December 1, 1944, and ending November 30, 1945, Merle L. Anderson sold and delivered to defendant 130,910 pounds of Grade A milk, that the defendant co-mingled the milk delivered by Merle L. Anderson with other milk delivered by others.

IV.

That defendant has no knowledge or information sufficient to form a belief concerning the fifth paragraph of plaintiff's third cause of action and therefore denies the allegations thereof.

As a further answer to plaintiff's third cause of action and by way of affirmative defense thereto defendant alleges as follows:

I.

That the milk sold and delivered by Merle L. Anderson to the defendant between December 1, 1944, and November 30, 1945, was purchased by the defendant at a fixed price per hundred pounds of milk delivered, which price varied from time to time during the year and that Merle L. Anderson

has been paid in full by the defendant for all milk so purchased.

II.

That after making the deductions authorized by paragraphs 7, 8 and 12 of the marketing agreement Merle L. Anderson has been fully paid by the defendant for all milk sold and delivered to the defendant by Merle L. Anderson.

In answer to plaintiff's Fourth Cause of Action the defendant admits, denies and alleges as follows:

I.

Defendant admits the allegations of the first and second paragraphs of plaintiff's fourth cause of action.

II.

Defendant denies each and all the allegations of the third paragraph of plaintiff's fourth cause of action except that defendant admits that milk sold and delivered by A. A. Rempel to the defendant was co-mingled with milk sold and delivered to the defendant by other dairymen and that such other dairymen were stockholders and members of the defendant corporation.

III.

Defendant denies each and all of the allegations of the fourth paragraph of plaintiff's fourth cause of action save and except that defendant admits that during the period beginning December 1, 1944,

and ending November 30, 1945, A. A. Rempel sold and delivered to defendant 48,925 pounds of Grade A milk, that the defendant co-mingled the milk delivered by A. A. Rempel with other milk delivered by others. [Penciled in Margin]: Ungraded.

IV.

That defendant has no knowledge or information sufficient to form a belief concerning the fifth paragraph of plaintiff's fourth cause of action and therefore denies the allegations thereof.

As a further answer to plaintiff's fourth cause of action and by way of affirmative defense thereto defendant alleges as follows:

I.

That the milk sold and delivered by A. A. Rempel to the defendant between December 1, 1944, and November 30, 1945, was purchased by the defendant at a fixed price per hundred pounds of milk delivered, which price varied from time to time during the year and that A. A. Rempel has been paid in full by the defendant for all milk so purchased.

II.

That after making the deductions authorized by paragraphs 7, 8 and 12 of the marketing agreement A. A. Rempel has been fully paid by the defendant for all milk sold and delivered to the defendant by A. A. Rempel.

In answer to plaintiff's Fifth Cause of Action the defendant admits, denies and alleges as follows:

I.

Defendant admits the allegations of the first and second paragraphs of plaintiff's fifth cause of action.

II.

Defendant denies each and all the allegations of the third paragraph of plaintiff's fifth cause of action except that defendant admits that milk sold and delivered by Arvid Johnson to the defendant was co-mingled with milk sold and delivered to the defendant by other dairymen and that such other dairymen were stockholders and members of the defendant corporation.

III.

Defendant denies each and all of the allegations of the fourth paragraph of plaintiff's fifth cause of action save and except that defendant admits that during the period beginning December 1, 1944, and ending November 30, 1945, Arvid Johnson sold and delivered to defendant 95,567 pounds of Grade A milk, that the defendant co-mingled the milk delivered by Arvid Johnson with other milk delivered by others.

IV.

That defendant has no knowledge or information sufficient to form a belief concerning the fifth paragraph of plaintiff's fifth cause of action and therefore denies the allegations thereof.

As a further answer to plaintiff's fifth cause of action and by way of affirmative defense thereto defendant alleges as follows:

I.

That the milk sold and delivered by Arvid Johnson to the defendant between December 1, 1944, and November 30, 1945, was purchased by the defendant at a fixed price per hundred pounds of milk delivered, which price varied from time to time during the year and that Arvid Johnson has been paid in full by the defendant for all milk so purchased.

II.

That after making the deductions authorized by paragraphs 7, 8 and 12 of the marketing agreement Arvid Johnson has been fully paid by the defendant for all milk sold and delivered to the defendant by Arvid Johnson.

In answer to plaintiff's Sixth Cause of Action the defendant admits, denies and alleges as follows:

I.

Defendant admits the allegations of the first and second paragraphs of plaintiff's sixth cause of action.

II.

Defendant denies each and all the allegations of the third paragraph of plaintiff's sixth cause of action except that defendant admits that milk sold and delivered by Jack Cope to the defendant was co-mingled with milk sold and delivered to the defendant by other dairymen and that such other dairymen were stockholders and members of the defendant corporation.

III.

Defendant denies each and all of the allegations of the fourth paragraph of plaintiff's sixth cause of action save and except that defendant admits that during the period beginning December 1, 1944, and ending November 30, 1945, Jack Cope sold and delivered to defendant 67,321 pounds of Grade A milk, that the defendant co-mingled the milk delivered by Jack Cope with other milk delivered by others.

IV.

That defendant has no knowledge or information sufficient to form a belief concerning the fifth paragraph of plaintiff's sixth cause of action and therefore denies the allegations thereof.

As a further answer to plaintiff's sixth cause of action and by way of affirmative defense thereto defendant alleges as follows:

I.

That the milk sold and delivered by Jack Cope to the defendant between December 1, 1944, and November 30, 1945, was purchased by the defendant at a fixed price per hundred pounds of milk delivered, which price varied from time to time during the year and that Jack Cope has been paid in full by the defendant for all milk so purchased.

II.

That after making the deductions authorized by paragraphs 7, 8 and 12 of the marketing agreement Jack Cope has been fully paid by the defendant

for all milk sold and delivered to the defendant by Jack Cope.

In answer to plaintiff's Seventh Cause of Action the defendant admits, denies and alleges as follows:

I.

Defendant admits the allegations of the first and second paragraphs of plaintiff's seventh cause of action.

II.

Defendant denies each and all of the allegations of the third paragraph of plaintiff's seventh cause of action except that defendant admits that milk sold and delivered by William Ising to the defendant was co-mingled with milk sold and delivered to the defendant by other dairymen and that such other dairymen were stockholders and members of the defendant corporation.

III.

Defendant denies each and all of the allegations of the fourth paragraph of plaintiff's seventh cause of action save and except that defendant admits that during the period beginning December 1, 1944, and ending November 30, 1945, William Ising sold and delivered to defendant 85,157 pounds of Grade A milk, that the defendant co-mingled the milk delivered by William Ising with other milk delivered by others.

IV.

That defendant has no knowledge or information

sufficient to form a belief concerning the fifth paragraph of plaintiff's seventh cause of action and therefore denies the allegations thereof.

As a further answer to plaintiff's seventh cause of action and by way of affirmative defense thereto defendant alleges as follows:

I.

That the milk sold and delivered by William Ising to the defendant between December 1, 1944, and November 30, 1945, was purchased by the defendant at a fixed price per hundred pounds of milk delivered, which price varied from time to time during the year and that William Ising has been paid in full by the defendant for all milk so purchased.

II.

That after making the deductions authorized by paragraphs 7, 8 and 12 of the marketing agreement William Ising has been fully paid by the defendant for all milk sold and delivered to the defendant by William Ising.

In answer to plaintiff's Eighth Cause of Action the defendant admits, denies and alleges as follows:

I.

Defendant admits the allegations of the first and second paragraphs of plaintiff's eighth cause of action.

II.

Defendant denies each and all the allegations of the third paragraph of plaintiff's eighth cause of action except that defendant admits that milk sold and delivered by Joseph Lentz to the defendant was co-mingled with milk sold and delivered to the defendant by other dairymen and that such other dairymen were stockholders and members of the defendant corporation.

III.

Defendant denies each and all of the allegations of the fourth paragraph of plaintiff's eighth cause of action save and except that defendant admits that during the period beginning December 1, 1944, and ending November 30, 1945, Joseph Lentz sold and delivered to defendant 42,856 pounds of Grade A milk, that the defendant co-mingled the milk delivered by Joseph Lentz with other milk delivered by others.

IV.

That defendant has no knowledge or information sufficient to form a belief concerning the fifth paragraph of plaintiff's eighth cause of action and therefore denies the allegations thereof.

As a further answer to plaintiff's eighth cause of action and by way of affirmative defense thereto defendant alleges as follows:

I.

That the milk sold and delivered by Joseph Lentz to the defendant between December 1, 1944, and

November 30, 1945, was purchased by the defendant at a fixed price per hundred pounds of milk delivered, which price varied from time to time during the year and that Joseph Lentz has been paid in full by the defendant for all milk so purchased.

II.

That after making the deductions authorized by paragraphs 7, 8 and 12 of the marketing agreement Joseph Lentz has been fully paid by the defendant for all milk sold and delivered to the defendant by Joseph Lentz.

In answer to plaintiff's Ninth Cause of Action the defendant admits, denies and alleges as follows:

I.

Defendant admits the allegations of the first and second paragraphs of plaintiff's ninth cause of action.

II.

Defendant denies each and all the allegations of the third paragraph of plaintiff's ninth cause of action except that defendant admits that milk sold and delivered by Clarence Quarnstrom to the defendant was co-mingled with milk sold and delivered to the defendant by other dairymen and that such other dairymen were stockholders and members of the defendant corporation.

III.

Defendant denies each and all of the allegations of the fourth paragraph of plaintiff's ninth cause

of action save and except that defendant admits that during the period beginning December 1, 1944, and ending November 30, 1945, Clarence Quarnstrom sold and delivered to defendant 33,595 pounds of Grade A milk, that the defendant co-mingled the milk delivered by Clarence Quarnstrom with other milk delivered by others.

IV.

That defendant has no knowledge or information sufficient to form a belief concerning the fifth paragraph of plaintiff's ninth cause of action and therefore denies the allegations thereof.

As a further answer to plaintiff's ninth cause of action and by way of affirmative defense thereto defendant alleges as follows:

I.

That the milk sold and delivered by Clarence Quarnstrom to the defendant between December 1, 1944, and November 30, 1945, was purchased by the defendant at a fixed price per hundred pounds of milk delivered, which price varied from time to time during the year and that Clarence Quarnstrom has been paid in full by the defendant for all milk so purchased.

II.

That after making the deductions authorized by paragraphs 7, 8 and 12 of the marketing agreement Clarence Quarnstrom has been fully paid by the defendant for all milk sold and delivered to the defendant by Clarence Quarnstrom.

In answer to plaintiff's Tenth Cause of Action the defendant admits, denies and alleges as follows:

I.

Defendant admits the allegations of the first and second paragraphs of plaintiff's tenth cause of action.

II.

Defendant denies each and all the allegations of the third paragraph of plaintiff's tenth cause of action except that defendant admits that milk sold and delivered by Thomas Moffit to the defendant was co-mingled with milk sold and delivered to the defendant by other dairymen and that such other dairymen were stockholders and members of the defendant corporation.

III.

Defendant denies each and all of the allegations of the fourth paragraph of plaintiff's tenth cause of action save and except that defendant admits that during the period beginning December 1, 1944, and ending November 30, 1945, Thomas Moffit sold and delivered to defendant 81,451 pounds of Grade A milk, that the defendant co-mingled the milk delivered by Thomas Moffit with other milk delivered by others.

IV.

That defendant has no knowledge or information sufficient to form a belief concerning the fifth paragraph of plaintiff's tenth cause of action and therefore denies the allegations thereof.

As a further answer to plaintiff's tenth cause of action and by way of affirmative defense thereto defendant alleges as follows:

I.

That the milk sold and delivered by Thomas Moffit to the defendant between December 1, 1944, and November 30, 1945, was purchased by the defendant at a fixed price per hundred pounds of milk delivered, which price varied from time to time during the year and that Thomas Moffit has been paid in full by the defendant for all milk so purchased.

II.

That after making the deductions authorized by paragraphs 7, 8 and 12 of the marketing agreement Thomas Moffit has been fully paid by the defendant for all milk sold and delivered to the defendant by Thomas Moffit.

In answer to plaintiff's Eleventh Cause of Action the defendant admits, denies and alleges as follows:

I.

Defendant admits the allegations of the first and second paragraphs of plaintiff's eleventh cause of action.

II.

Defendant denies each and all the allegations of the third paragraph of plaintiff's eleventh cause of action except that defendant admits that milk sold and delivered by Paul Nelson to the defendant was co-mingled with milk sold and delivered to the

defendant by other dairymen and that such other dairymen were stockholders and members of the defendant corporation.

III.

Defendant denies each and all of the allegations of the fourth paragraph of plaintiff's eleventh cause of action save and except that defendant admits that during the period beginning December 1, 1944, and ending November 30, 1945, Paul Nelson sold and delivered to defendant 36,170 pounds of Grade A milk, that the defendant co-mingled the milk delivered by Paul Nelson with other milk delivered by others. [Penciled in Margin]: Ungraded.

IV.

That defendant has no knowledge or information sufficient to form a belief concerning the fifth paragraph of plaintiff's eleventh cause of action and therefore denies the allegations thereof.

As a further answer to plaintiff's Eleventh cause of action and by way of affirmative defense thereto defendant alleges as follows:

I.

That the milk sold and delivered by Paul Nelson to the defendant between December 1, 1944, and November 30, 1945, was purchased by the defendant at a fixed price per hundred pounds of milk delivered, which price varied from time to time during the year and that Paul Nelson has been paid in full by the defendant for all milk so purchased.

II.

That after making the deductions authorized by paragraphs 7, 8 and 12 of the marketing agreement Paul Nelson has been fully paid by the defendant for all milk sold and delivered to the defendant by Paul Nelson.

In answer to plaintiff's Twelfth Cause of action the defendant admits, denies and alleges as follows:

I.

Defendant admits the allegations of the first and second paragraphs of plaintiff's twelfth cause of action.

II.

Defendant denies each and all the allegations of the third paragraph of plaintiff's *twelfth except* that defendant admits that milk sold and delivered by B. J. Lossing to the defendant was co-mingled with milk sold and delivered to the defendant by other dairymen and that such other dairymen were stockholders and members of the defendant corporation.

III.

Defendant denies each and all of the allegations of the fourth paragraph of plaintiff's twelfth cause of action save and except that defendant admits that during the period beginning December 1, 1944, and ending November 30, 1945, B. J. Lossing sold and delivered to defendant 52,053 pounds of Grade A milk, that the defendant co-mingled the milk delivered by B. J. Lossing with other milk delivered by others.

IV.

That defendant has no knowledge or information sufficient to form a belief concerning the fifth paragraph of plaintiff's twelfth cause of action and therefore denies the allegations thereof.

As a further answer to plaintiff's Twelfth cause of action and by way of affirmative defense thereto defendant alleges as follows:

I.

That the milk sold and delivered by B. J. Lossing to the defendant between December 1, 1944, and November 30, 1945, was purchased by the defendant at a fixed price per hundred pounds of milk delivered, which price varied from time to time during the year and that B. J. Lossing has been paid in full by the defendant for all milk so purchased.

II.

That after making the deductions authorized by paragraphs 7, 8 and 12 of the marketing agreement B. J. Lossing has been fully paid by the defendant for all milk sold and delivered to the defendant by B. J. Lossing.

In answer to plaintiff's Thirteenth Cause of Action the defendant admits, denies and alleges as follows:

I.

Defendant admits the allegations of the first and second paragraphs of plaintiff's thirteenth cause of action.

II.

Defendant denies each and all the allegations of the third paragraph of plaintiff's thirteenth cause of action except that defendant admits that milk sold and delivered by Chet Liebing to the defendant was co-mingled with milk sold and delivered to the defendant by other dairymen and that such other dairymen were stockholders and members of the defendant corporation.

III.

Defendant denies each and all of the allegations of the fourth paragraph of plaintiff's thirteenth cause of action save and except that defendant admits that during the period beginning December 1, 1944, and ending November 30, 1945, Chet Liebing sold and delivered to defendant 1,475 pounds of Grade A milk, that the defendant co-mingled the milk delivered by Chet Liebing with other milk delivered by others. [Penciled in Margin]: Un-graded.

IV.

That defendant has no knowledge or information sufficient to form a belief concerning the fifth paragraph of plaintiff's thirteenth cause of action and therefore denies the allegations thereof.

As a further answer to plaintiff's Thirteenth cause of action and by way of affirmative defense thereto defendant alleges as follows:

I.

That the milk sold and delivered by Chet Liebing to the defendant between December 1, 1944, and

November 30, 1945, was purchased by the defendant at a fixed price per hundred pounds of milk delivered, which price varied from time to time during the year and that Chet Liebing has been paid in full by the defendant for all milk so purchased.

II.

That after making the deductions authorized by paragraphs 7, 8 and 12 of the marketing agreement Chet Liebing has been fully paid by the defendant for all milk sold and delivered to the defendant by Chet Liebing.

In answer to plaintiff's Fourteenth Cause of Action the defendant admits, denies and alleges as follows:

I.

Defendant admits the allegations of the first and second paragraphs of plaintiff's fourteenth cause of action.

II.

Defendant denies each and all the allegations of the third paragraph of plaintiff's fourteenth cause of action except that defendant admits that milk sold and delivered by Alvin J. Collier to the defendant was co-mingled with milk sold and delivered to the defendant by other dairymen and that such other dairymen were stockholders and members of the defendant corporation.

III.

Defendant denies each and all of the allegations of the fourth paragraph of plaintiff's fourteenth

cause of action save and except that defendant admits that during the period beginning December 1, 1944, and ending November 30, 1945, Alvin J. Collier sold and delivered to defendant 9,851 pounds of Grade A milk, that defendant co-mingled the milk delivered by Alvin J. Collier with other milk delivered by others. [Penciled in Margin]: Ungraded.

IV.

That defendant has no knowledge or information sufficient to form a belief concerning the fifth paragraph of plaintiff's fourteenth cause of action and therefore denies the allegations thereof.

As a further answer to plaintiff's Fourteenth cause of action and by way of affirmative defense thereto defendant alleges as follows:

I.

That the milk sold and delivered by Alvin J. Collier to the defendant between December 1, 1944, and November 30, 1945, was purchased by the defendant at a fixed price per hundred pounds of milk delivered, which price varied from time to time during the year and that Alvin J. Collier has been paid in full by the defendant for all milk so purchased.

II.

That after making the deductions authorized by paragraphs 7, 8 and 12 of the marketing agreement Alvin J. Collier has been fully paid by the defendant for all milk sold and delivered to the defendant by Alvin J. Collier.

In answer to plaintiff's Fifteenth Cause of Action the defendant admits, denies and alleges as follows:

I.

Defendant admits the allegations of the first and second paragraphs of plaintiff's fifteenth cause of action.

II.

Defendant denies each and all the allegations of the third paragraph of plaintiff's fifteenth cause of action except that defendant admits that milk sold and delivered by William Lentz to the defendant was co-mingled with milk sold and delivered to the defendant by other dairymen and that such other dairymen were stockholders and members of the defendant corporation.

III.

Defendant denies each and all of the allegations of the fourth paragraph of plaintiff's fifteenth cause of action save and except that defendant admits that during the period beginning December 1, 1944, and ending November 30, 1945, William Lentz sold and delivered to defendant 58,303 pounds of Grade A milk, that defendant co-mingled the milk delivered by William Lentz with other milk delivered by others.

IV.

That defendant has no knowledge or information sufficient to form a belief concerning the fifth paragraph of plaintiff's fifteenth cause of action and therefore denies the allegations thereof.

As a further answer to plaintiff's Fifteenth cause of action and by way of affirmative defense thereto defendant alleges as follows:

I.

That the milk sold and delivered by William Lentz to the defendant between December 1, 1944, and November 30, 1945, was purchased by the defendant at a fixed price per hundred pounds of milk delivered, which price varied from time to time during the year and that William Lentz has been paid in full by the defendant for all milk so purchased.

II.

That after making deductions authorized by paragraphs 7, 8 and 12 of the marketing agreement William Lentz has been fully paid by the defendant for all milk sold and delivered to the defendant by William Lentz.

In answer to plaintiff's Sixteenth Cause of Action the defendant admits, denies and alleges as follows:

I.

Defendant admits the allegations of the first and second paragraphs of plaintiff's Sixteenth cause of action.

II.

Defendant denies each and all the allegations of the third paragraph of plaintiff's sixteenth cause of action except that defendant admits that milk sold and delivered by Henning Benson to the de-

fendant was co-mingled with milk sold and delivered to the defendant by other dairymen and that such other dairymen were stockholders and members of the defendant corporation.

III.

Defendant denies each and all of the allegations of the fourth paragraph of plaintiff's sixteenth cause of action save and except that defendant admits that during the period beginning December 1, 1944, and ending November 30, 1945, Henning Benson sold and delivered to defendant 32,299 pounds of Grade A milk, that defendant co-mingled the milk delivered by Henning Benson with other milk delivered by others. [Penciled in Margin]: Ungraded.

IV.

That defendant has no knowledge or information sufficient to form a belief concerning the fifth paragraph of plaintiff's sixteenth cause of action and therefore denies the allegations thereof.

As a further answer to plaintiff's Sixteenth cause of action and by way of affirmative defense thereto defendant alleges as follows:

I.

That the milk sold and delivered by Henning Benson to the defendant between December 1, 1944, and November 30, 1945, was purchased by the defendant at a fixed price per hundred pounds of milk delivered, which price varied from time to time during the year and that Henning Benson

has been paid in full by the defendant for all milk so purchased.

II.

That after making the deductions authorized by paragraphs 7, 8 and 12 of the marketing agreement Henning Benson has been fully paid by the defendant for all milk sold and delivered to the defendant by Henning Benson.

In answer to plaintiff's Seventeenth Cause of Action the defendant admits, denies and alleges as follows:

I.

Defendant admits the allegations of the first and second paragraphs of plaintiff's Seventeenth cause of action.

II.

Defendant denies each and all the allegations of the third paragraph of plaintiff's seventeenth cause of action except that defendant admits that milk sold and delivered by Walter C. Huntley to the defendant was co-mingled with milk sold and delivered to the defendant by other dairymen and that such other dairymen were stockholders and members of the defendant corporation.

III.

Defendant denies each and all of the allegations of the fourth paragraph of plaintiff's seventeenth cause of action save and except that defendant admits that during the period beginning December 1, 1944, and ending November 30, 1945, Walter C.

Huntley sold and delivered to defendant 32,236 pounds of Grade A milk, that defendant co-mingled the milk delivered by Walter C. Huntley with other milk delivered by others.

IV.

That defendant has no knowledge or information sufficient to form a belief concerning the fifth paragraph of plaintiff's seventeenth cause of action and therefore denies the allegations thereof.

As a further answer to plaintiff's Seventeenth cause of action and by way of affirmative defense thereto defendant alleges as follows:

I.

That the milk sold and delivered by Walter C. Huntley to the defendant between December 1, 1944, and November 30, 1945, was purchased by the defendant at a fixed price per hundred pounds of milk delivered, which price varied from time to time during the year and that Walter C. Huntley has been paid in full by the defendant for all milk so purchased.

II.

That after making the deductions authorized by paragraphs 7, 8 and 12 of the marketing agreement Walter C. Huntley has been fully paid by the defendant for all milk sold and delivered to the defendant by Walter C. Huntley.

In answer to plaintiff's Eighteenth Cause of Action the defendant admits, denies and alleges as follows:

I.

Defendant admits the allegations of the first and second paragraphs of plaintiff's eighteenth cause of action.

II.

Defendant denies each and all the allegations of the third paragraph of plaintiff's eighteenth cause of action except that defendant admits that milk sold and delivered by Lawrence Plumley to the defendant was co-mingled with milk sold and delivered to the defendant by other dairymen and that such other dairymen were stockholders and members of the defendant corporation.

III.

Defendant denies each and all of the allegations of the fourth paragraph of plaintiff's eighteenth cause of action save and except that defendant admits that during the period beginning December 1, 1944, and ending November 30, 1945, Lawrence Plumley sold and delivered to defendant 15,790 pounds of Grade A milk, that defendant co-mingled the milk delivered by Lawrence Plumley with other milk delivered by others. [Penciled in Margain]: Ungraded.

IV.

That defendant has no knowledge or information sufficient to form a belief concerning the fifth paragraph of plaintiff's eighteenth cause of action and therefore denies the allegations thereof.

As a further answer to plaintiff's eighteenth cause of action and by way of affirmative defense thereto defendant alleges as follows:

I.

That the milk sold and delivered by Lawrence Plumley to the defendant between December 1, 1944, and November 30, 1945, was purchased by the defendant at a fixed price per hundred pounds of milk delivered, which price varied from time to time during the year and that Lawrence Plumley has been paid in full by the defendant for all milk so purchased.

II.

That after making the deductions authorized by paragraphs 7, 8 and 12 of the marketing agreement Lawrence Plumley has been fully paid by the defendant for all milk sold and delivered to the defendant by Lawrence Plumley.

In answer to plaintiff's Nineteenth Cause of Action the defendant admits, denies and alleges as follows:

I.

Defendant admits the allegations of the first and second paragraphs of plaintiff's Nineteenth cause of action.

II.

Defendant denies each and all the allegations of the third paragraph of plaintiff's nineteenth cause of action except that defendant admits that milk sold and delivered by H. S. Bauer to the defendant

was co-mingled with milk sold and delivered to the defendant by other dairymen and that such other dairymen were stockholders and members of the defendant corporation.

III.

Defendant denies each and all of the allegations of the fourth paragraph of plaintiff's nineteenth cause of action save and except that defendant admits that during the period beginning December 1, 1944, and ending November 30, 1945, H. S. Bauer sold and delivered to defendant 6,196 pounds of Grade A milk, that defendant co-mingled the milk delivered by H. S. Bauer with other milk delivered by others. [Penciled in Margin]: Ungraded.

IV.

That defendant has no knowledge or information sufficient to form a belief concerning the fifth paragraph of plaintiff's nineteenth cause of action and therefore denies the allegations thereof.

As a further answer to plaintiff's nineteenth cause of action and by way of affirmative defense thereto defendant alleges as follows:

I.

That the milk sold and delivered by H. S. Bauer to the defendant between December 1, 1944, and November 30, 1945, was purchased by the defendant at a fixed price per hundred pounds of milk delivered, which price varied from time to time during the year and that H. S. Bauer has been paid in full by the defendant for all milk so purchased.

II.

That after making the deductions authorized by paragraphs 7, 8 and 12 of the marketing agreement H. S. Bauer has been fully paid by the defendant for all milk sold and delivered to the defendant by H. S. Bauer.

In answer to plaintiff's Twentieth Cause of Action the defendant admits, denies and alleges as follows:

I.

Defendant admits the allegations of the first and second paragraphs of plaintiff's Twentieth cause of action.

II.

Defendant denies each and all the allegations of the third paragraph of plaintiff's twentieth cause of action except that defendant admits that milk sold and delivered by A. R. Moffitt to the defendant was co-mingled with milk sold and delivered to the defendant by other dairymen and that such other dairymen were stockholders and members of the defendant corporation.

III.

Defendant denies each and all of the allegations of the fourth paragraph of plaintiff's twentieth cause of action save and except that defendant admits that during the period beginning December 1, 1944, and ending November 30, 1945, A. R. Moffitt sold and delivered to defendant 63,949 pounds of Grade A milk, that defendant co-mingled the milk

delivered by A. R. Moffitt with other milk delivered by others.

IV.

That defendant has no knowledge or information sufficient to form a belief concerning the fifth paragraph of plaintiff's twentieth cause of action and therefore denies the allegations thereof.

As a further answer to plaintiff's twentieth cause of action and by way of affirmative defense thereto defendant alleges as follows:

I.

That the milk sold and delivered by A. R. Moffitt to the defendant between December 1, 1944, and November 30, 1945, was purchased by the defendant at a fixed price per hundred pounds of milk delivered, which price varied from time to time during the year and that A. R. Moffitt has been paid in full by the defendant for all milk so purchased.

II.

That after making the deductions authorized by paragraphs 7, 8 and 12 of the marketing agreement A. R. Moffitt has been fully paid by the defendant for all milk sold and delivered to the defendant by A. R. Moffitt.

In answer to plaintiff's Twenty-first Cause of Action the defendant admits, denies and alleges as follows:

I.

Defendant admits the allegations of the first and

second paragraphs of plaintiff's twenty-first cause of action.

II.

Defendant denies each and all the allegations of the third paragraph of plaintiff's twenty-first cause of action except that defendant admits that milk sold and delivered by Leonard Bergan to the defendant was co-mingled with milk sold and delivered to the defendant by other dairymen and that such other dairymen were stockholders and members of the defendant corporation.

III.

Defendant denies each and all of the allegations of the fourth paragraph of plaintiff's twenty-first cause of action save and except that defendant admits that during the period beginning December 1, 1944, and ending November 30, 1945, Leonard Bergan sold and delivered to defendant 2,643 pounds of Grade A milk, that defendant co-mingled the milk delivered by Leonard Bergan with other milk delivered by others. [Penciled in Margin]: Ungraded.

IV.

That defendant has no knowledge or information sufficient to form a belief concerning the fifth paragraph of plaintiff's twenty-first cause of action and therefore denies the allegations thereof.

As a further answer to plaintiff's twenty-first cause of action and by way of affirmative defense thereto defendant alleges as follows:

I.

That the milk sold and delivered by Leonard Bergan to the defendant between December 1, 1944, and November 30, 1945, was purchased by the defendant at a fixed price per hundred pounds of milk delivered, which price varied from time to time during the year and that Leonard Bergan has been paid in full by the defendant for all milk so purchased.

II.

That after making the deductions authorized by paragraphs 7, 8 and 12 of the marketing agreement Leonard Bergan has been fully paid by the defendant for all milk sold and delivered to the defendant by Leonard Bergan.

In answer to plaintiff's Twenty-second cause of action the defendant admits, denies and alleges as follows:

I.

Defendant admits the allegations of the first and second paragraphs of plaintiff's twenty-second cause of action.

II.

Defendant denies each and all the allegations of the third paragraph of plaintiff's twenty-second cause of action except that defendant admits that milk sold and delivered by Harold Thuma to the defendant was co-mingled with milk sold and delivered to the defendant by other dairymen and that such other dairymen were stockholders and members of the defendant corporation.

III.

Defendant denies each and all of the allegations of the fourth paragraph of plaintiff's twenty-second cause of action save and except that defendant admits that during the period beginning December 1, 1944, and ending November 30, 1945, Harold Thuma sold and delivered to defendant 23,004 pounds of Grade A milk, that defendant co-mingled the milk delivered by Harold Thuma with other milk delivered by others. [Penciled in Margin]: Ungraded.

IV.

That defendant has no knowledge or information sufficient to form a belief concerning the fifth paragraph of plaintiff's twenty-second cause of action and therefore denies the allegations thereof.

As a further answer to plaintiff's twenty-second cause of action and by way of affirmative defense thereto defendant alleges as follows:

I.

That the milk sold and delivered by Harold Thuma to the defendant between December 1, 1944, and November 30, 1945, was purchased by the defendant at a fixed price per hundred pounds of milk delivered, which price varied from time to time during the year and that Harold Thuma has been paid in full by the defendant for all milk so purchased.

II.

That after making the deductions authorized by paragraphs 7, 8 and 12 of the marketing agreement Harold Thuma has been fully paid by the defendant

for all milk sold and delivered to the defendant by Harold Thuma.

Wherefore, defendant having fully answered the allegations of plaintiff's Complaint prays that plaintiff take nothing thereby and that this matter may be dismissed with costs to the defendant.

DAVIS & RENFREW,
Attorneys for the Defendant.

By /s/ EDWARD V. DAVIS.

United States of America,
Territory of Alaska—ss.

E. E. Harriss, being first duly sworn, upon his oath, deposes and says:

That he is the Manager of the Matanuska Valley Farmers Cooperating Association, the defendant in the above-entitled action, and that he makes this verification for and on behalf of said corporation; that he has read the within and foregoing Answer, knows the contents thereof and that the same is true as he verily believes.

/s/ E. E. HARRISS.

Subscribed and sworn to before me this 27th day of December, 1946.

[Seal] /s/ KATHLY R. HAMBY,
Notary Public in and for the
Territory of Alaska.

My commission expires December 15th, 1947.

[Endorsed]: Filed January 29, 1947.

MINUTE ORDER ENTERED MARCH 13, 1947

Trial by Court

[Title of Cause.]

No. A-4252

Now on this 13th day of March, 1947, came the plaintiff, C. R. Monaghan, in cause No. A-4252, entitled C. R. Monaghan, plaintiff versus Matanuska Valley Farmers Cooperating Association, a corporation, defendant, and with his counsel George B. Grigsby, the defendant being present through Edward V. Davis, of its counsel, and both sides announcing themselves as ready for trial the following proceedings were had, to wit:

Opening statement to the Court was had by George B. Grigsby, for and in behalf of the plaintiff.

Statement to the Court was had by Edward V. Davis, for and in behalf of the defendant.

At 12:05 o'clock p. m. Court continued cause until 2:00 o'clock p. m.

Now came the respective parties and the respective counsel as heretofore and the trial of cause No. A-4252, entitled C. R. Monaghan, plaintiff versus Matanuska Valley Farmers Cooperating Association, a corporation, defendant, was resumed.

Edward V. Davis, resumed his opening statement to the Court, for and in behalf of the defendant.

Fred McAllister, being first duly sworn testified for and in behalf of the plaintiff.

A form of Member's Standard Marketing Contract, was duly offered, marked and admitted as plaintiff's exhibit No. 1.

A Report of milk sold, was duly offered, marked and admitted as plaintiff's exhibit No. 2.

An Account of Fiscal year 1946 and 1945 etc., was duly offered, marked and admitted as plaintiff's exhibit No. 3 as to year 1945 only.

A condensed profit and loss statement of 1944 was duly offered, marked and admitted as plaintiff's exhibit No. 4.

C. R. Monaghan, being first duly sworn, testified for and in behalf of plaintiff.

Four vouchers were duly offered, marked and admitted as plaintiff's exhibit No. 5.

At 4:30 o'clock p.m. Court continued cause until 10:00 o'clock a.m., of Friday, March 14, 1947.



MINUTE ORDER ENTERED MARCH 14, 1947

Trial by Court Continued

[Title of Cause.]

No. A-4252

Now came the respective parties and the respective counsel as heretofore and the trial of cause No. A-4252, entitled C. R. Monaghan, plaintiff versus Matanuska Valley Farmers Cooperating Association, a corporation, defendant, was resumed.

C. R. Monaghan, heretofore duly sworn, resumed the witness stand and testified for and in behalf of the plaintiff.

Marvin Allyn, being first duly sworn, testified for and in behalf of the plaintiff.

At 12:05 o'clock p. m., Court continued cause until 1:30 o'clock p. m.

Now came the respective parties and the respective counsel as heretofore and the trial of cause No. A-4252, entitled C. R. Monaghan, plaintiff versus Matanuska Valley Farmers Cooperating Association, a corporation, defendant, was resumed.

Marvin Allyn, heretofore duly sworn, resumed the witness stand for further testimony for and in behalf of the plaintiff.

A report of audit for the Matanuska Valley Farmers Cooperating Association for the year 1945 was duly offered, marked and admitted as plaintiff's exhibit No. 6.

A report of audit for the Matanuska Valley Farmers Cooperating Association for the year 1944 was duly offered, marked and admitted as defendant's exhibit No. 1.

The articles of incorporation and the code of by-laws for the Matanuska Valley Farmers Cooperating Association were duly offered, marked and admitted as defendant's exhibit No. 2.

A statement of milk sold by the plaintiff was duly offered, marked and admitted as defendant's exhibit No. 3.

A schedule of milk prices paid to farmer was duly offered, marked and admitted as defendant's exhibit No. 4.

At 3:06 o'clock p.m., Court continued the trial of this cause to 3:18 o'clock p. m.

Now came the respective parties and the respective counsel as heretofore and the trial of cause No.

A-4252, entitled C. R. Monaghan, plaintiff versus Matanuska Valley Farmers Cooperating Association, a corporation, defendant, was resumed.

Marvin Allyn, heretofore duly sworn, resumed the witness stand for further testimony for and in behalf of the plaintiff.

Roland Snodgrass, being first duly sworn, testified for and in behalf of the plaintiff.

At 4:25 o'clock p. m., Court continued the trial of this cause to 11:00 o'clock a. m., of Tuesday, April 1, 1947.



MINUTE ORDER ENTERED APRIL 7, 1947

Trial by Court Continued

[Title of Cause.]

No. A-4252

Now came the respective parties and the respective counsel as heretofore and the trial of cause No. A-4252, entitled C. R. Monaghan, plaintiff versus Matanuska Valley Farmers Cooperating Association, a corporation, defendant, was resumed. Roland Snodgrass, heretofore duly sworn, resumed the witness stand for further testimony for and in behalf of the plaintiff.

At 11:06 o'clock a. m. Court continued trial of this cause to 11:15 o'clock a. m.

Now came the respective parties and the respective counsel as heretofore and the trial of cause No. A-4252, entitled C. R. Monaghan, plaintiff versus

Matanuska Valley Farmers Cooperating Association, a corporation, defendant, was resumed.

Roland Snodgrass, heretofore duly sworn, resumed the witness stand for further testimony for and in behalf of the plaintiff.

A. A. Rempel, being first duly sworn, testified for and in behalf of the plaintiff.

A remittance advice titled second payment on milk pool, was duly offered, marked and admitted as plaintiff's exhibit No. 7.

At 11:50 o'clock a.m. Court continued trial of this cause to 2:00 o'clock p. m.

Now came the respective parties and the respective counsel as heretofore and the trial of cause No. A-4252, entitled C. R. Monaghan, plaintiff versus Matanuska Valley Farmers Cooperating Association, a corporation, defendant, was resumed.

Clarence Quarnstrom, being first duly sworn, testified for and in behalf of the plaintiff.

A remittance advice titled "second milk pool advance" was duly offered, marked and admitted as plaintiff's exhibit No. 8.

A final payment on milk pool dated September 10, 1945 was duly offered, marked and admitted as plaintiff's exhibit No. 9.

At 3:12 o'clock p. m., Court declared recess until 3:23 o'clock p.m.

Now came the respective parties and the respective counsel as heretofore and the trial of cause No. A-4252, entitled C. R. Monaghan, plaintiff versus Matanuska Valley Farmers Cooperating Association, a corporation, defendant, was resumed.

William Ising, being first duly sworn, testified for and in behalf of the plaintiff.

Arvid Johnson, being first duly sworn, testified for and in behalf of the plaintiff.

Two remittance advices were duly offered, marked and admitted as plaintiff's exhibit No. 10.

One remittance advice and a final payment on milk pool slip, the latter dated September 10, 1945, was duly offered, marked and admitted as plaintiff's exhibit No. 11.

A remittance advice and a final payment on milk pool slip, the latter dated September 10, 1945 was duly offered, marked and admitted as plaintiff's exhibit No. 12.

Two remittance advices were duly offered, marked and admitted as plaintiff's exhibit No. 13.

A remittance advice was duly offered, marked and admitted as plaintiff's exhibit No. 14.

John Lyle Cope, being first duly sworn, testified for and in behalf of the plaintiff.

A remittance advice was duly offered, marked and admitted as plaintiff's exhibit No. 15.

Two remittance advices were duly offered, marked and admitted as plaintiff's exhibit No. 16.

At this time oral stipulation was made by and between respective counsel regarding future testimony in behalf of the plaintiff.

At 4:03 o'clock p. m. Court continued the trial of this cause until 10:00 o'clock a. m. of Tuesday, April 8, 1947.

MINUTE ORDER ENTERED APRIL 8, 1947

Trial by Court Continued

[Title of Cause.]

No. A-4252

Now came the respective parties and the respective counsel as heretofore and the trial of cause No. A-4252, entitled C. R. Monaghan, plaintiff versus Matanuska Valley Farmers Cooperating Association, a corporation, defendant, was resumed.

Roland Snodgrass, heretofore duly sworn, resumed the witness stand for further testimony for and in behalf of plaintiff.

At 11:05 o'clock a.m. Court continued trial of this cause to 11:15 o'clock a.m.

Now came the respective parties and the respective counsel as heretofore and the trial of cause No. A-4252, entitled C. R. Monaghan, plaintiff versus Matanuska Valley Farmers Cooperating Association, a corporation, defendant, was resumed.

Roland Snodgrass, heretofore duly sworn, resumed the witness stand for further testimony for and in behalf of the plaintiff.

At 12 noon Court continued trial of this cause to 1:30 o'clock p. m.

Now came the respective parties and the respective counsel as heretofore and the trial of cause No. A-4252, entitled C. R. Monaghan, plaintiff versus Matanuska Valley Farmers Cooperating Association, a corporation, defendant, was resumed.

Roland Snodgrass, heretofore duly sworn, re-

sumed the witness stand for further testimony for and in behalf of the plaintiff.

At 2:40 o'clock p. m. Court continued trial of this cause to 2:50 o'clock p. m.

Now came the respective parties and the respective counsel as heretofore and the trial of cause No. A-4252, entitled C. R. Monaghan, plaintiff versus Matanuska Valley Farmers Cooperating Association, a corporation, defendant, was resumed.

Roland Snodgrass, heretofore duly sworn, resumed the witness stand for further testimony for and in behalf of the plaintiff.

Walter E. Huntley, being first duly sworn, testified for and in behalf of the plaintiff.

Two remittance advices were duly offered, marked and admitted as plaintiff's exhibit No. 17.

Marvin Allyn, heretofore duly sworn, resumed the witness stand for further testimony for and in behalf of the plaintiff.

A profit and loss calculation as copied from the Courtroom blackboard as illustration of the testimony of Roland Snodgrass was duly offered, marked and admitted as defendant's exhibit No. 5.

Fred McAllister, heretofore duly sworn, resumed the witness stand for further testimony for and in behalf of the plaintiff.

The plaintiff rests.

Virgil Eckert, being first duly sworn, testified for and in behalf of the defendant.

A copy of the minutes of a meeting of the board of directors for the Matanuska Valley Farmers Co-operating Association, on February 10, 1943, was duly offered, marked and admitted as defendant's exhibit No. 6.

A copy of the minutes of a meeting of the board of directors for the Matanuska Valley Farmers Co-operating Association, of February 13, 1943, was duly offered, marked and admitted as defendant's exhibit No. 7.

A copy of the minutes of a meeting of the board of directors for the Matanuska Valley Farmers Co-operating Association, of January 15, 1944, was duly offered, marked and admitted as defendant's exhibit No. 8.

A copy of a motion made by Hoffman at board of directors meeting on October 7, 1944, was duly offered, marked and admitted as defendant's exhibit No. 9.

A copy of the minutes of board of directors meeting on March 22, 1946, was duly offered, marked and admitted as defendant's exhibit No. 10.

At this time, on oral motion of Edward V. Davis, of counsel for defendants, the trial of this cause was continued to 11:00 o'clock a.m. of Friday, April 18, 1947.

MINUTE ORDER ENTERED MAY 16, 1947

M. O. of Continuance

[Title of Cause.]

No. A-4252

Now at this time the trial of cause No. A-4252, entitled C. R. Monaghan plaintiff versus Matanuska Valley Farmers Cooperating Association, a corporation, defendant, was continued for completion of trial until July 15, 1947 at 10:00 o'clock a.m.

MINUTE ORDER ENTERED JULY 15, 1947

Trial by Court Continued

[Title of Cause.]

No. A-4252

Now came the respective parties and the respective counsel as heretofore and the trial of cause No. A-4252, entitled C. R. Monaghan, plaintiff versus Matanuska Valley Farmers Cooperating Association, a corporation, defendant, was resumed.

Marvin Allyn, heretofore duly sworn, resumed the witness stand for further testimony for and in behalf of the defendant.

L. C. Stock, being first duly sworn, testified for and in behalf of the defendant.

At 11:18 o'clock a.m. Court continued trial of this cause to 11:25 o'clock a.m.

Now came the respective parties and the respective counsel as heretofore and the trial of cause No.

A-4252, entitled C. R. Monaghan, plaintiff versus Matanuska Valley Farmers Cooperating Association, a corporation, defendant, was resumed.

Marvin Allyn, heretofore duly sworn, resumed the witness stand for further cross-examination for and in behalf of the plaintiff.

The defendant rests.

Fred McAllister, heretofore duly sworn, resumed the witness stand for rebuttal examination for and in behalf of the plaintiff.

An assignment to C. R. Monaghan by Harold L. Thuma was duly offered, marked and admitted as plaintiff's exhibit No. 18.

Virgil Eckert, heretofore duly sworn, resumed the witness stand for further testimony for and in behalf of the defendants.

Plaintiff rests.

Defense rests.

On motion of George B. Grigsby, counsel for plaintiff, counsel stipulated to submit written arguments and Court directed fifteen days for plaintiff to submit written brief and defendant given fifteen days to submit written brief. At this time ten days was allowed plaintiff to answer defendants argument in brief.

At 11:47 o'clock a.m. Court continued trial of this cause to termination of period allowed for submission of briefs.

[Title of District Court and Cause.]

MOTION TO AMEND COMPLAINT TO
CONFORM TO THE FACTS

Comes now the plaintiff in the above-entitled action and moves the court that an order issue directing that the complaint herein may be amended to conform to the facts, as shown by the evidence introduced in said action.

Plaintiff further moves that this cause be reopened for the purpose of this motion.

/s/ GEORGE B. GRIGSBY,
Attorney for Plaintiff.

Service admitted August 14, 1947.

/s/ EDWARD V. DAVIS,
Attorneys for Defendant.

[Endorsed]: Filed August 14, 1947.

MINUTE ORDER ENTERED
NOVEMBER 21, 1947

M. O. Rendering Oral Decision

[Title of Cause.]

No. A-4252

Now at this time the plaintiff not being present but represented by his counsel, George B. Grigsby, the defendant not being present but represented by Edward V. Davis of its counsel,

The Court now renders oral decision in cause No. A-4252, entitled, C. R. Monaghan, plaintiff, versus Matanuska Valley Farmers Cooperating Association, defendant, finding for the plaintiff and against the defendant, and directs counsel to prepare and submit Findings of Fact and Conclusions of Law and Judgment in accordance with the oral decision given herein.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on for hearing on the 13th day of March, 1947, before the above-entitled court sitting at Anchorage, Alaska, the plaintiff appearing in person and by his attorney, George B. Grigsby, the defendant appearing by their attorneys, Renfrew and Davis.

It having been stipulated by the respective parties that the case be tried by the court without a jury, witnesses were sworn and testified on behalf of the plaintiff and the defendant; and the court having heard the testimony and being fully advised in the premises now makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

I.

That the Matanuska Valley Farmers Cooperating Association is a corporation, organized and doing

business by virtue of the laws of the Territory of Alaska, and during the period beginning December 1st, 1944, and for a long time prior thereto and ever since said date, was engaged in the business of buying, selling, handling and processing agricultural products on a cooperative basis with its stockholders and members, near Palmer, Alaska.

II.

That the plaintiff, and his assignors named in the Complaint herein, were, during the period above-mentioned, stockholders and members of the said Matanuska Valley Farmers Cooperating Association, and engaged in the dairy business near Palmer, Alaska, and during the period beginning December 1st, 1944, and ending November 30, 1945, and for a long time prior thereto, sold their milk product to the said defendant under and according to the terms of written contracts theretofore entered into between the plaintiff and his said assignors, and defendant. That said written contracts were identical in terms and a true copy of said contract except that the signatures of the plaintiff and of plaintiff's assignors and of the defendant are omitted therefrom, is attached to the Complaint on file herein and marked "Exhibit A" and made a part of said Complaint.

III.

That paragraphs (3), (4), (5), (6), and (7) of said contract are as follows:

(3) It is mutually agreed that the term "agricultural products" as used herein includes horticultural

tural, viticultural, forestry, dairy, poultry, bee and farm and ranch products and also includes such livestock raised for the market as the Association accepts for resale.

(4) The Association agrees that upon delivery of agricultural products hereunder it may make or cause to be made through its Management and Sales Agency such requested advances to the Producer on said products as in its discretion may be justified by the Producer's immediate needs and by marketing conditions.

(5) The Association agrees to receive, handle by inspecting, assembling, sorting, grading, packing, preserving, canning or otherwise processing, storing, advertising, transporting and other services necessary to prepare for market and sale and to market and resell agricultural products delivered hereunder, together with like products delivered by other members either separately or commingled or pooled at its discretion and to pay therefor as set forth in this Contract or cause the same to be done through its Management and Sales Agency.

(6) Producer agrees that the Association may establish or cause to be established through its Management and Sales Agency daily, weekly, monthly, seasonal, yearly, and/or other pools by grades of any agricultural products received from its members and may co-mingle or pool any of the products delivered hereunder with other like products delivered by others or cause same to be done and remit

or cause to be remitted to the Producer and other producers concerned, on the basis of the interest of each one therein, as payments in full for the products delivered by them and sold in said pool, the net average price received therefor after making the deductions provided for in this Contract with the object of causing all members whose products are sold therein to receive the same price for products of the same grade.

(7) The Association agrees to pay or cause to be paid through its Management and Sales Agency to the Producer the amounts received for the said resale of said products sold separately or the amounts representing Producer's interest in products resold wherein his products are pooled or co-mingled with others as provided for in Paragraph 6 herein after making deductions to cover the following items in connection therewith: (a) repayment of advances made to Producer under Paragraph 4 of this Contract and interest on said advances; (b) reasonable charges for the services of receiving, handling and selling said agricultural products under Paragraph 5 of this Contract; (c) operating and maintenance expenses; (d) one dollar each year in payment of the official publication of the Association in case said publication is issued; (e) two per centum (2%) of the gross sales price received for the products of said member sold separately or of the amounts representing said member's interest in products sold wherein his products are pooled or co-mingled with others as funds belonging to the Association to meet

its indebtedness and additional expenses, contribute to the Association's reserves (with which to acquire ownership of industries and enterprises and property in connection therewith and for other proper purposes), to pay interest on capital stock by way of dividends and for other proper purposes as provided for by the laws of Alaska pertaining to "Co-operative Associations" under which the Association has been incorporated and by the By-Laws of the Association.

IV.

That in accordance with the provisions of paragraphs (5) and (6) of said contract, as above set forth, the defendant elected to and did, during all the period beginning December 1st, 1944, and ending November 30th, 1945, pool and co-mingle the milk sold and delivered by plaintiff and his assignors with the milk sold and delivered to defendant by other dairymen, who were, during all the said period stockholders and members of the defendant corporation, and resold the said milk and milk products thereof as thus co-mingled.

V.

That during the period beginning December 1st, 1944, and ending November 30th, 1945, the plaintiff and his assignors sold and delivered to defendant 1,082,128 pounds of Grade A milk, and 176,986 pounds of Grade B milk for which defendant promised and agreed to pay plaintiff and his said assignors, according to the provisions of paragraphs (6) and (7) of the said contract, that is to say an amount

representing plaintiff's interest and the interest of plaintiff's assignors in all milk and milk product resold by defendant with which plaintiff's milk was pooled and co-mingled, and the proceeds thereof, after making deductions to cover the items mentioned and stated in paragraph (7) of the said contract.

That the defendant pooled and co-mingled the milk so as aforesaid sold and delivered to defendant by plaintiff and his assignors, with the milk sold and delivered to defendant by others and resold the same as thus co-mingled; that by reason of the premises there became due and owing to the plaintiff and his assignors from the defendant on the 1st day of July, 1946, after deduction of the items stated in paragraph (7) of said contract the aggregate sum of \$28,700.60, no part of which has been paid.

VI.

That for a valuable consideration and prior to the commencement of this action, the plaintiff's said assignors, named in the Complaint herein, sold and assigned to plaintiff their respective interest in the aforesaid aggregate sum of \$28,700.60 and plaintiff is now the owner thereof.

VII.

That prior to the commencement of this action the plaintiff and his said assignors demanded of defendant the payment of the sums respectively due each of them, but defendant has failed, neglected and refused to pay the same or any part thereof,

and the same are still due, owing and unpaid, together with interest according to law.

And from the foregoing facts the court deduces the following Conclusions of Law:

Conclusions of Law

I.

That the plaintiff is entitled to recover from the defendant the sum of \$28,700.60 being the sum due and owing to plaintiff as set forth in paragraphs V and VI hereof, together with interest at the rate of 6 per cent per annum from the 1st day of July, 1946.

Let judgment be entered accordingly.

Dated at Anchorage, Alaska, this 29th day of December, 1947.

/s/ ANTHONY J. DIMOND,
District Judge.

To each of the above Findings of Fact the defendant objects, and an exception is allowed.

/s/ ANTHONY J. DIMOND,
District Judge.

Dated December 29th, 1947.

[Endorsed]: Filed December 29, 1947.

In The District Court for The Territory of Alaska,
Third Division

No. A-4252

C. R. MONAGHAN,

Plaintiff,

vs.

MATANUSKA VALLEY FARMERS COOPER-
ATING ASSOCIATION, a Corporation,
Defendant.

JUDGMENT

This cause coming on for trial on the 13th day of March, 1947, before the above-entitled court sitting at Anchorage, Alaska, the plaintiff appearing in person and by his attorney, George B. Grigsby, the defendant appearing by their attorneys, Renfrew and Davis; it having been stipulated by the respective parties that the case be tried before the court without a jury, and witnesses having been sworn and testified on behalf of the plaintiff and defendant, and the court having heard the testimony and having made Findings of Fact and Conclusions of Law herein,

Now therefore: It is ordered and adjudged:

I.

That the plaintiff have and recover from the defendant the sum of \$28,700.60 with interest at the rate of 6 per cent per annum, from the 1st day of July, 1946, amounting to the sum of \$2544.74, and

with interest at the rate of 6 per cent per annum on the total sum of \$31,245.34 from the date hereof.

II.

That the plaintiff have and recover from the defendant their costs and disbursements herein amounting to the sum of \$357.00.

Dated this 29th day of December, 1947.

/s/ ANTHONY J. DIMOND,
District Judge.

To the foregoing the defendant objects and an exception is allowed defendant.

Dated December 29th, 1947.

/s/ ANTHONY J. DIMOND,
District Judge.

[Endorsed]: Filed December 29, 1947.

[Title of District Court and Cause.]

SUPPLEMENTAL MEMORANDUM OF COSTS
AND DISBURSEMENTS

Disbursements

Clerk's Fees	\$ 21.00
Witness Fees and Mileage	336.00

Total	\$357.00

United States of America,
Territory of Alaska,
Third Division—ss.

George B. Grigsby, being duly sworn, deposes and says: That he is the Attorney for the Plaintiff in the above-entitled cause, and as such is better informed relative to the above costs and disbursements, than the said plaintiffs. That the items in the above-memorandum contained are correct, to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause.

/s/ GEORGE B. GRIGSBY.

Subscribed and sworn to before me, this 13th day of January, A.D. 1948.

[Seal] /s/ M. E. S. BRUNELLE,
Clerk of the District Court, Territory of Alaska,
Third Division.

[Endorsed]: Filed January 13, 1948.

[Title of District Court and Cause.]

ORDER

It appearing to the Court from the records and files herein that judgment was rendered in the above-entitled action, in the above-entitled Court on the 29th day of December, 1947, in favor of the plaintiff and against the defendant for the sum of Thirty-One Thousand Two Hundred Forty-Five

and $34/100$ Dollars (\$31,245.34) with interest on said sum from the date of said judgment at the rate of six per cent (6%) per annum until paid together with costs and disbursements on the date of said judgment, amounting to the sum of Three Hundred Fifty-seven Dollars (\$357.00) and

It further appearing that on the 14th day of January, 1948 an execution was issued on said judgment by the Clerk of said Court and placed in the hands of the United States Marshal for the Territory of Alaska, and that on the 9th day of March, 1948, the said Marshal made his return on his said execution to the Clerk of this Court and delivered to the said Clerk of this Court the sum of Thirty-Two Thousand Two Hundred and $35/100$ Dollars, (\$32,200.35) being the proceeds of levies made by said Marshal by virtue of said execution which has been applied by the Clerk of this Court, to the satisfaction of said judgment.

There further appearing that there was on the date of said levies due and owing to the plaintiff on said judgment, the sum of Thirty-One Thousand Two Hundred Forty-Five and $34/100$ Dollars (\$31,245.34) together with interest on said sum at the rate of six per cent (6%) per annum from December 29, 1947 to the date of said levies to wit: February 26, 1948, amounting to the sum of Two Hundred Ninety-Six and $50/100$ Dollars (\$296.50) and the sum of Three Hundred Fifty-Seven Dollars (\$357.00) costs, and the further sum of Six Dollars (\$6.00) accrued costs as appears from the return of the United States Marshal of said execution amount-

ing in all to the sum of Thirty-One Thousand Nine Hundred Four and 84/100 Dollars (\$31,904.84),
Now, Therefore,

It Is Ordered and Directed that the Clerk of this Court pay from the moneys so placed in his hands as aforesaid by the United States Marshal to the plaintiff, C. R. Monaghan, or his attorney, George B. Grigsby, the sum of Thirty-One Thousand Nine Hundred Four and 84/100 Dollars (\$31,904.84) and that the balance remaining to wit: the sum of Two Hundred Ninety-Five and 51/100 Dollars (\$295.51) be returned to the defendant.

Dated March 10, 1948.

/s/ ANTHONY J. DIMOND,
District Judge.

[Endorsed]: Filed March 10, 1948.

[Title of District Court and Cause.]

PETITION FOR ALLOWANCE OF APPEAL

To: The Honorable Anthony J. Dimond, Judge of
The District Court for the Third Division, Ter-
ritory of Alaska:

Your petitioner, Matanuska Valley Farmer's Cooperating Association, a corporation, respectfully shows:

1. Petitioner is the defendant in the above-entitled cause.

2. Final judgment was entered in the above-entitled cause against petitioner and in favor of C. R. Monaghan, the plaintiff, on the 29th day of December, 1947.

3. Petitioner considers that it has been aggrieved by the judgment made and entered in this cause on the 29th day of December, 1947, as above set forth.

Wherefore, Petitioner prays that an appeal may be allowed from the judgment above-mentioned, to the United States Circuit Court of Appeals for the Ninth Circuit, and in connection with this petition, petitioner presents herewith his assignments of error.

Dated this 25th day of March, 1948.

EDWARD V. DAVIS and
WILLIAM W. RENFREW,

Attorneys at Law, Anchorage, Alaska, Attorneys
for the Defendant, and Petitioner,

By /s/ EDWARD V. DAVIS.

[Endorsed]: Filed March 25, 1948.

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Comes now Matanuska Valley Farmers Cooperating Association, a corporation, defendant and appellant herein, and files the following assignments of error, upon which it will rely in the prosecution

of its appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final judgment made and entered in this cause on the 29th day of December, 1947, by the above-entitled Court, as follows, to wit:

1. That the Complaint upon which plaintiff's action was based and under which evidence was introduced on behalf of the plaintiff and which is the basis for the judgment rendered as above set forth, does not state facts sufficient to constitute a cause of action.

2. That the Court erred in finding:

(a) As in its second finding of fact: "That the plaintiff and his assignors named in the Complaint herein * * *" in that no assignment from any of the individuals named in the various causes of action of plaintiff's Complaint, to the plaintiff, C. R. Monaghan, was presented to the Court, save and except an assignment by one Harold Thuma.

(b) As in its third finding of fact by setting forth the provisions of paragraphs three, four, five, six and seven of marketing contract, and failing to find as to other provisions of such contract, applicable to the case in question and in particular, the preamble of such contract, and paragraphs one, eight, twelve, fourteen, nineteen, and twenty thereof.

(c) As in its fourth finding of fact: "That in accordance with the provisions of paragraphs five and six of said contract as above set forth, the defendant elected to and did, during all the period

beginning December 1, 1944 and ending November 30, 1945, pool and co-mingle * * * * *” insofar as said finding may be considered as being a finding by the Court, that defendant corporation had organized a “milk pool” and as a finding that any persons except Harold Thuma had assigned claims to plaintiff.

(d) As in its fifth finding of fact: “* * * * * for which defendant promised and agreed to pay plaintiff and his assignors according to the provisions of paragraphs six and seven of the said contract, that is to say an amount representing plaintiff’s interest and the interest of plaintiff’s assignors in all milk and milk product resold by defendant with which plaintiff’s milk was pooled and co-mingled, and the proceeds thereof, after making deductions to cover the items mentioned and stated in paragraph seven of the said contract.

“That the defendant pooled and co-mingled the milk so as aforesaid, sold and delivered to the defendant by plaintiff and his assignors, with the milk sold and delivered to the defendant by others and resold the same as thus co-mingled; that by reason of the premises, there became due and owing to the plaintiff and his assignors from the defendant, on the first day of July, 1946, after deduction of the items stated in paragraph seven of said contract, the aggregate sum of Twenty-eight thousand Seven Hundred and 60/100 Dollars (\$28,700.60), no part of which has been paid,” in that such finding ignores the defenses raised by the defendant in this case

and is not supported by sufficient evidence and is contrary to the evidence of the case, and in that there is not sufficient competent evidence to support the finding that the plaintiff is entitled to recover any sum of and from the defendant in this action and that there is no competent evidence to support the finding of the Court that the plaintiff and his assignors were entitled to receive from the defendant the aggregate of \$28,700.60 or any part thereof or any sum at all, either on the first day of July, 1946, or at any other day or that no part of any sum due to the plaintiff from the defendant had been paid by the defendant, or that any parties save and except Harold Thuma had assigned any claims to plaintiff. That such finding is contrary to law and not in accordance with the provisions of the marketing contract between plaintiff and defendant and is not supported by any competent evidence introduced in this cause.

(e) As in its sixth finding of fact: "That for a valuable consideration and prior to the commencement of this action, the plaintiff's said assignors in this Complaint herein, sold and assigned the plaintiff their respective interest in the aforesaid aggregate sum of \$28,700.60 and plaintiff is now the owner thereof," in that there is no competent evidence before the Court that the plaintiff and his so-called assignors were entitled to the sum of \$28,700.60 or any part thereof from the defendant and that such finding is contrary to the evidence. That there is no competent evidence of any assignment

except as to Harold Thuma nor is there any evidence of consideration or of ownership.

(f) As in its seventh finding of fact: "That prior to the commencement of this action, the plaintiff and his said assignors, demanded of defendant the payment of the sums respectively due each of them, but defendant has failed, neglected and refused to pay the same or any part thereof, and the same are still due, owing and unpaid, together with interest according to law," in that the evidence in this cause failed to support such finding, and that such finding is contrary to the evidence.

And to each of which said findings, defendant excepted and said exceptions were allowed.

3. That the Court erred in failing and refusing to find in this matter:

(a) That defendant, Matanuska Valley Farmers Cooperating Association, in the period December 1, 1944, to and including November 30, 1945, elected to and did purchase milk from plaintiff and his so-called assignors at a flat delivery price on its own account in accordance with the provisions of paragraph five and eight of the Members Standard Marketing Contract.

(b) That the Court erred in failing to find that the plaintiff and his so-called assignors have been paid in full for all the milk delivered to defendant in the period in question.

(c) That the Court erred in failing to find, in the event the Members Standard Marketing Agree-

ment and the evidence should disclose in the opinion of the Court, that some money was due to plaintiff for milk sold in the period in question, that the amount due to plaintiff was limited to his share of the net proceeds of the sale of milk and milk products after taking into consideration all the debts and obligations and operation and maintenance expenses of the defendant corporation rather than, as apparently found by the Court, that plaintiff was entitled to recover his proportionate share of the so-called profit of the dairy department of defendant corporation and without taking into consideration liabilities and expenses of operating and maintaining defendant corporation as a whole.

(d) That the Court erred in failing and refusing to find that if plaintiff is entitled to recover anything at all in this action, that reasonable charges for the services of receiving, handling and selling agricultural products under paragraph five of the Standard Marketing Contract were not limited to charges actually incurred in handling plaintiff's milk, and other milk purchased by the defendant.

(e) That the Court erred in failing to find that defendant in this action was entitled to elect as to whether payment to plaintiff and his so-called assignors for milk should be made according to the provisions of paragraph seven of the Standard Marketing Contract or on an out and out purchase basis by the defendant at a flat delivery price in accordance with the provisions of paragraph five and eight of the Marketing Contract and that the defendant did elect to purchase plaintiff's milk and

that of the other milk producers on the basis of a flat delivery price and that any further payment to plaintiff and his so-called assignors on account of such milk should be limited to distribution of profits of the corporation, according to the volume of products furnished to the corporation by the producers, as the undisputed evidence shows has always been done by the defendant corporation.

4. That the Court erred in forming its conclusions of law as follows:

(a) Conclusion of Law numbered one: "That the plaintiff is entitled to recover from the defendant the sum of \$28,700.60, being the sum due and owing to plaintiff as set forth in paragraphs V and VI hereof, together with interest at the rate of six per cent per annum from the sixth day of July, 1946," to which conclusion of law, defendant excepted and said exception was allowed, for the reason that such conclusion of law is contrary to law under the evidence introduced in this case.

5. The Court erred in rendering its judgment for the plaintiff, C. R. Monaghan, and against the defendant, Matanuska Valley Farmers Cooperating Association, in this matter. The Court's errors in this regard were based on the following errors of the Court occurring during the trial of the case: All of the errors herein assigned, to wit: Assignments of error, one, two, three, four and five, inclusive.

Wherefore, defendant and appellant prays that the judgment in the above-entitled cause be reversed and the cause be remanded with instructions to the

trial court as to further proceedings therein and for such other and further relief as may be just in the premises.

Dated this 25th day of March, 1948.

EDWARD V. DAVIS and
WILLIAM W. RENFREW,

Attorneys at Law of Anchorage, Alaska, Attorneys
for the Defendant and Appellant,

By /s/ EDWARD V. DAVIS.

[Endorsed]: Filed March 25, 1948.

[Title of District Court and Cause.]

ACKNOWLEDGEMENT OF SERVICE

The undersigned Attorney for plaintiff and respondent herein hereby acknowledges receipt of true copies of each of the foregoing documents, to wit:

1. Petition for Allowance of Appeal.
2. Assignment of errors.
3. Order allowing appeal.
4. Order extending time for preparing and filing record on appeal and to settle bill of exceptions.
5. Citation on appeal.

Dated at Anchorage, Alaska, this 25th day of March, 1948.

/s/ GEORGE B. GRIGSBY,
Attorney for Plaintiff.

[Endorsed]: Filed March 26, 1948.

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL

The Petition of Matanuska Valley Farmers Co-operating Association, a corporation, defendant in the above-entitled action for an appeal from the final judgment rendered therein is hereby granted and the appeal is allowed.

It Is Further Ordered that petitioner in this matter may, if it chooses so to do, deposit with the Clerk of this Court the sum of Two Hundred Fifty Dollars (\$250.00) in lieu of cost bond on appeal and such deposit may be returned to petitioner upon the filing by petitioner of a good and sufficient cost bond on appeal in the manner provided by law, such bond to be approved by the Clerk of this Court.

Dated at Anchorage, Alaska, this 26th day of March, 1948.

/s/ ANTHONY J. DIMOND,
District Judge.

[Endorsed]: Filed March 26, 1948.

[Title of District Court and Cause.]

CITATION ON APPEAL

To the Plaintiff C. R. Monaghan and to His Attorney, George B. Grigsby.

You and Each of You are hereby cited and admonished to be and appear in the United States

Circuit Court of Appeals for the Ninth Circuit to be held at San Francisco, in the State of California, forty days from the date of the within citation pursuant to the order allowing appeal on file in the Clerk's Office of the District Court for the Territory of Alaska, Third Division and in that certain action pending in the said Court, entitled C. R. Monaghan, plaintiff, vs. Matanuska Valley Farmers Cooperating Association, a corporation, defendant, number A-4252, wherein Matanuska Valley Farmers Cooperating Association is appellant and you are the appellee, to show cause if any there be, why the judgment rendered against Matanuska Valley Farmers Cooperating Association should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Anthony J. Dimond, District Judge for the Territory of Alaska, Third Division, this 26th day of March, 1948, and of the independence of the United States the year one hundred seventy-two.

/s/ ANTHONY J. DIMOND,
Judge of the District Court
For the Third Division.

Attest:

[Seal]: /s/ M. E. S. BRUNELLE,
Clerk of Said Court.

[Endorsed]: Filed March 26, 1948.

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR PREPARING AND FILING RECORD ON APPEAL AND TO SETTLE BILL OF EXCEPTIONS

This matter coming on for hearing upon the application of the defendant, Matanuska Valley Farmers Cooperating Association, requesting 75 days additional time to prepare and file the record on appeal in the above-entitled cause and to settle the bill of exceptions; it is hereby

Ordered that the defendant, Matanuska Valley Farmers Cooperating Association, have 75 days additional time, to wit: until the 8th day of June, 1948 within which to prepare, file or have approved the records and bill of exceptions in the above-entitled cause.

Done in open court at Anchorage, Alaska, this 26th day of March, 1948.

/s/ ANTHONY J. DIMOND,
District Judge.

[Endorsed]: Filed March 26, 1948.

[Title of District Court and Cause.]

MOTION FOR EXTENSION OF TIME FOR
PREPARING AND FILING RECORD ON
APPEAL AND PREPARATION AND SET-
TLEMENT OF BILL OF EXCEPTIONS
AND FOR ENLARGEMENT OF THE
JUDGMENT TERM FOR THE PURPOSE
OF PREPARATION AND FILING AND
DOCKETING OF THE RECORDS AND
PREPARATION AND FILING OF BILL
OF EXCEPTIONS

Comes now Matanuska Valley Farmer's Cooperating Association, a corporation, the above-named defendant, and requests of the Court an Additional period of sixty (60) days from and after the 8th day of June, 1948, previously set by the Court as the time for filing the record and bill of exceptions in the above-entitled matter for preparation and filing of such record and of such bill of exceptions in the above-entitled cause and that the judgment term may be extended for the purpose of such preparation and filing.

This motion is based on all the records and files of this action and upon the affidavit of Edward V. Davis, one of the attorneys for the defendant and appellant.

Dated at Anchorage, Alaska, this 28th day of May, 1948.

DAVIS & RENFREW,
Attorneys for the Defendant
and Appellant.

By /s/ EDWARD V. DAVIS.

[Endorsed]: Filed May 29, 1948.

[Title of District Court and Cause.]

AFFIDAVIT

United States of America,
Territory of Alaska,
Third Judicial Division—ss.

Edward V. Davis, being first duly sworn, upon his oath deposes and says:

That he is one of the attorneys for the defendant and appellant, Matanuska Valley Farmer's Cooperating Association, a corporation; that on or about the 26th day of March, 1948, the above-entitled Court made its order allowing appeal in this matter to the Circuit Court for the Ninth Circuit at San Francisco, California, and on the same day entered its order extending time for preparation and filing record on appeal and for settlement on bill of exceptions in this matter; that a considerable period of time before such 26th day of March, 1948, affiant ordered a transcript of the proceedings in this matter from the Court reporter, but that due to press of other business, the Court reporter has been unable, to the present date, to furnish such transcript; that as affiant is informed and believes and so alleges the fact to be, the transcript in the above-entitled matter will be ready within the next few days for delivery to affiant; that affiant is unable to properly prepare this matter on appeal and to prepare the matters for making up the official record to be docketed in the case and for the preparation of bill of exceptions in the matter until he has

had an opportunity to study the official transcript prepared by the reporter in the matter and that as affiant believes, it will take at least sixty (60) days after the transcript is delivered to prepare and file the record in this case, and prepare and settle and file the bill of exceptions in the cause.

This affidavit is made in support of defendant's motion for extension of time for preparing and filing and docketing record on appeal and for preparation and settlement of bill of exceptions and for extension of the judgment term pending such preparation, filing and settling.

/s/ EDWARD V. DAVIS.

Subscribed and sworn to before me this 28th day of May, 1948.

[Seal] /s/ WILLIAM W. RENFREW,
Notary Public for Alaska.

My Commission Expires August 12, 1949.

[Endorsed]: Filed May 29, 1948.

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR
DOCKETING APPEAL

This matter coming on for hearing upon the application of the defendant, Matanuska Valley Farmer's Cooperating Association, requesting an additional sixty (60) days time from and after the 8th

day of June, 1948, within which to prepare, file and docket the record on appeal in the above-entitled cause and within which to prepare and settle and file bill of exceptions in the matter and requesting an extension of the judgment term for the purpose of preparing and filing and docketing such papers and such records, and the Court having read the Affidavit of Edward V. Davis, one of the attorneys for the defendant, together with the Court file, and the Court being fully advised in the premises; Now, Therefore,

It Is Hereby Ordered, Adjudged and Decreed that that the defendant and appellant, Matanuska Valley Farmer's Cooperating Association, shall have and it is hereby granted a period of sixty (60) days additional time from and after the 8th day of June, 1948, within which to prepare, file and docket the record on appeal in the above-entitled cause and within which to prepare, settle, and file bill of exceptions in the said cause and the judgment term is hereby extended for that purpose for a period of sixty (60) days from and after the 8th day of June, 1948.

Done in open Court this 29th day of May, 1948.

/s/ ANTHONY J. DIMOND,
District Judge.

[Endorsed]: Filed May 29, 1948.

[Title of District Court and Cause.]

STIPULATION OF COUNSEL RELATING
TO EXHIBITS

It is hereby stipulated and agreed by and between counsel for plaintiff and counsel for defendant in the above-entitled matter that a printed duplicate of Members Standard Marketing Agreement introduced as plaintiff's Exhibit 1 in this cause may be included in the Bill of Exceptions as plaintiff's Exhibit 1, rather than a typewritten copy of such contract.

It is further stipulated and agreed by and between counsel that defendant's Exhibit 2, being a booklet containing Articles of Incorporation and By-Laws of the Matanuska Valley Farmer's Cooperating Association, may be included as defendant's Exhibit 2 in the Bill of Exceptions, by including therein a booklet containing such Articles of Incorporation and By-Laws in its printed form, rather than a typewritten copy thereof, such booklet included as defendant's Exhibit 2 in the Bill of Exceptions being a duplicate booklet to the one introduced into evidence as defendant's Exhibit 2.

Dated this 5th day of August, 1948.

/s/ EDWARD V. DAVIS,
Of Defendant's Attorneys.

/s/ GEORGE B. GRIGSBY,
Plaintiff's Attorney.

[Endorsed]: Filed August 5, 1948.

MINUTE ORDER ENTERED JULY 28, 1948

M. O. Withdrawing Official Court File

[Title of Cause.]

No. A-4252

Now at this time upon motion of Edward V. Davis, of counsel for defendant,

It is ordered that cause No. A-4252, entitled C. R. Monaghan, plaintiff, versus Matanuska Valley Farmers Cooperating Association, a corporation, defendant, with exhibits thereto, be, and they are hereby, withdrawn from the official court file.

MINUTE ORDER ENTERED AUGUST 5, 1948

M. O. Extending Time To File Objections To Proposed Bill of Exceptions

[Title of Cause.]

No. A-4252

Now at this time upon motion of George B. Grigsby, counsel for plaintiff, by and through Edward V. Davis, of counsel for defendant, and with counsel for defendant not objecting thereto; the plaintiff not being present nor represented, the defendant not being present but represented by Edward V. Davis, of its counsel,

It is ordered that the plaintiff in cause No. A-4252, entitled C. R. Monaghan, plaintiff, versus Matanuska Valley Farmers Cooperating Association, a corporation, defendant, be, and he is hereby, allowed until

the end of the summer recess of this court to file objections to the proposed bill of exceptions presented by defendant, and defendant allowed 30 days after bill of exceptions settled to file and docket cause with the Ninth Circuit Court of Appeals.

MINUTE ORDER ENTERED AUGUST 5, 1948

M. O. Receiving Bill Of Exceptions

[Title of Cause.]

No. A-4252

Now at this time the plaintiff not being present or represented by counsel, the defendant not being present but represented by Edward V. Davis, of its counsel,

Whereupon Edward V. Davis, of counsel for defendant presented to the Court for settlement the proposed bill of exceptions for and in behalf of the defendant in cause No. A-4252, entitled C. R. Monaghan, plaintiff, versus Matanuska Valley Farmers Cooperating Association, a corporation, defendant, and the Court received the same and directed that said bill of exceptions be filed.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE OBJECTIONS AND AMENDMENTS TO PROPOSED BILL OF EXCEPTIONS

This cause coming on upon the application of the plaintiff herein for an order extending time within which the plaintiff may file amendments and objections to the proposed Bill of Exceptions filed herein, and good cause appearing therefor,

It is ordered that the time within which the plaintiff may serve and file amendments and objections to the proposed Bill of Exceptions on file herein is hereby extended to and including the 21st day of September, 1948.

Dated September 2nd, 1948.

/s/ ANTHONY J. DIMOND,
District Judge.

[Endorsed]: Filed September 2, 1948.

[Title of District Court and Cause.]

PROPOSED AMENDMENTS TO
BILL OF EXCEPTIONS

Amendment No. 1,

That there be added to the second page of the Bill of Exceptions filed herein, the following statement:

That copies of the exhibits introduced in evidence

by the respective parties, namely Plaintiff's Exhibits 1 to 18 inclusive, and Defendant's Exhibits 1 to 10, inclusive, are hereunto attached and made a part of this Bill of Exceptions.

Amendment No. 2,

That the word "identification" be omitted wherever the same occurs on any of the exhibits.

Amendment No. 3,

That there be written at the top of each page of Plaintiff's Exhibit 6, the words "Plaintiff's Ex. 6, Page," inserting the appropriate page number.

Amendment No. 4,

That there be written at the top of each page of Defendant's Exhibit 1, the words, "Defendant's Exhibit, Page," Inserting the appropriate page number.

/s/ GEORGE B. GRIGSBY,
Attorney for Plaintiff.

Service admitted October 15th, 1948.

/s/ EDWARD V. DAVIS,
Attorneys for Defendant.

[Endorsed]: Filed October 15, 1948.

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated and agreed by and between counsel for plaintiff and counsel for defendant, above-named, that the Bill of Exceptions presented by the defendant-appellant, consisting of Reporter's Transcript of Proceedings, including the opinion of the Judge, and copies of exhibits introduced on behalf of plaintiff and on behalf of defendant, as amended at the suggestion of plaintiff and according to the stipulation dated April 14, 1950, is a full, true, correct and accurate statement of all the evidence introduced at the trial of this cause, and is hereby approved.

It is further stipulated and agreed that the said Bill of Exceptions may be amended by the Clerk of this Court insofar as the amendments are concerned, in accordance with the suggestions of the plaintiff, and in accordance with the stipulation of the parties dated April 14, 1950.

It is further stipulated and agreed that the said Bill of Exceptions, including the opinion of the Judge and including copies of exhibits, may be brought on for hearing before the Court without further notice and that an immediate hearing be had upon the same, and that the same may be approved and settled by the Court as the Bill of Exceptions in the above-entitled cause.

Dated at Anchorage, Alaska, this 14th day of April, 1950.

DAVIS & RENFREW,
Attorneys for Defendant,

By /s/ EDWARD V. DAVIS.

/s/ GEORGE B. GRIGSBY,
Attorney for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed April 14, 1950.

[Title of District Court and Cause.]

ORDER APPROVING, CERTIFYING AND
SETTLING BILL OF EXCEPTIONS

Matanuska Valley Farmers Cooperating Association, a corporation, defendant-appellant in the above-entitled cause, having applied to this Court for an order approving and certifying the Bill of Exceptions in the above-entitled matter, to be used on defendant's appeal to the Court of Appeals for the Ninth Circuit, from that certain judgment entered in the above-entitled matter on the 29th day of December, 1947, and it appearing that plaintiff, through his counsel, has made certain amendments to the Bill of Exceptions as presented, and that the parties, through their respective counsel, have stipulated that the Clerk of this Court may change the Bill of Exceptions in accordance with such amendments, and it further appearing that the plaintiff

and defendant, by and through their respective counsel, have stipulated that the said Bill of Exceptions, as amended, consisting of Reporter's Transcript of Proceedings, including oral opinion of the Judge, and including copies of the exhibits introduced on behalf of the plaintiff and on behalf of the defendant, is a true and accurate statement of all the evidence introduced on the trial of such cause, and have stipulated and agreed that the said Bill of Exceptions may be brought on for hearing and settlement and certification, without further notice, and that an immediate hearing may be had upon the same, and it further appearing that said Bill of Exceptions contains Reporter's Transcript of Proceedings, including the oral opinion of the Judge in this matter, together with copies of all exhibits introduced on behalf of the plaintiff and on behalf of the defendant at the trial, and that such Bill of Exceptions is complete and correct;

Now, therefore, the Court, having examined said Bill of Exceptions, and being fully advised in the premises, it is therefore Ordered that the said Bill of Exceptions as amended by the Clerk in accordance with stipulation of the parties, shall be and the same is hereby approved and settled as the Bill of Exceptions upon the appeal of the defendant, Matanuska Valley Farmers Cooperating Association, a corporation, to the Court of Appeals for the Ninth Circuit, and

It is further ordered that this order shall be deemed and taken as a certification of the undersigned Judge of this Court, who presided at the

hearing of said cause and before whom all the evidence in said cause was given, that the said Bill of Exceptions contains Reporter's Transcript of all the evidence given on the trial of the cause and includes the oral opinion of the Court in the matter and includes all the Exhibits introduced on behalf of both of the parties at the trial and includes all matters upon which the judgment of the Court, dated December 29, 1947, was based.

It is further ordered that, in accordance with the order entered by this Court on the 5th day of August, 1948, the defendant-appellant is allowed thirty days from the date of this order within which to file its record and docket the appeal with the Court of Appeals for the Ninth Circuit.

Done by the Court and order entered this 14th day of April, 1950, at Anchorage, Third Division, Territory of Alaska.

/s/ ANTHONY J. DIMOND,
District Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed April 14, 1950.

[Title of District Court and Cause.]

STIPULATION RE SETTLEMENT OF BILL
OF EXCEPTIONS

It is hereby stipulated by and between counsel of record for the plaintiff-respondent and the defendant-appellant, respectively, that the amendments listed below proposed by plaintiff-respondent to the "Bill of Exceptions" (Transcript) heretofore filed herein by the defendant-appellant, shall be allowed, and the Bill of Exceptions (Transcript) settled in accordance herewith.

In conformity with the order of the above-entitled Court, dated August 5, 1948, the defendant-appellant shall be allowed thirty days after such settlement of the Bill of Exceptions (Transcript) to file the record and docket its appeal with the Circuit Court of Appeals, Ninth Circuit.

1) That copies of the Exhibits introduced by the respective parties, namely plaintiff's exhibits one (1) to eighteen (18), inclusive, and defendant's exhibits one (1) to ten (10), inclusive, shall be attached to such Bill of Exceptions (Transcript) and made a part thereof;

2) That the word "identification" be stricken wherever it occurs in any of the exhibits;

3) That there be written at the top of each page of plaintiff's exhibits the words "Plaintiff's Exhibit page," inserting the appropriate number of exhibit and the page thereof;

4) That there be written at the top of each of defendant's exhibits, the words "Defendant's Exhibit page," indicating the number of exhibit and the page thereof.

Dated this 14th day of April, 1950.

/s/ EDWARD V. DAVIS,
Of Attorneys for Defendant-
Appellant.

/s/ GEORGE B. GRIGSBY,
Attorney for Plaintiff-Respondent.

[Endorsed]: Filed April 14, 1950.

[Title of District Court and Cause.]

STIPULATION RE EXHIBITS

It is hereby stipulated by and between the attorneys of record for the plaintiff-respondent and defendant-appellant, respectively, that an order may be entered herein authorizing the Clerk of the above-entitled court to transmit to the United States Court of Appeals for the Ninth Circuit all exhibits admitted in evidence at the trial of this cause as the same are set forth in the original volume III of

the Transcript of Proceedings (Bill of Exceptions) in the above-entitled cause.

/s/ EDWARD V. DAVIS,
Attorneys for Plaintiff-Respondent.

/s/ GEORGE B. GRIGSBY,
Attorneys for Defendant-Appellant.

[Endorsed]: Filed May 9, 1950.

[Title of District Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the District Court for the Territory of Alaska, Third Division:

You are hereby requested to forward the record in the above-entitled cause to the United States Court of Appeals for the Ninth Circuit, pursuant to an appeal taken in such cause, such record to include the entire record, including reporter's transcript of the evidence, and exhibits introduced in the cause contained in the bill of exceptions settled by the Court in the matter, and including specifically the following documents:

1. Complaint.
2. Answer.
3. Minute order dated February 15, 1947 setting trial.

4. Minute orders dated March 13, March 14, April 7, April 8, May 16, and July 15, 1947, respectively, having to do with the trial of the cause.
5. Motion to amend complaint in open case to conform to evidence.
6. Brief and argument of plaintiff filed August 14, 1947.
7. Argument on behalf of defendant.
8. Reply brief and argument of plaintiff.
9. Minute order dated November 21, 1947, oral decision of the Court in favor of plaintiff and against defendant.
10. Findings of Fact and Conclusions of Law dated December 29, 1947.
11. Judgment in favor of plaintiff and against defendant dated December 29, 1947.
12. Cost bill.
13. Supplemental cost bill.
14. Execution, including Marshal's return.
15. Notice of levy of execution.
16. Petition for allowance of appeal.
17. Assignment of errors.
18. Acknowledgment of service.
19. Order allowing appeal.
20. Citation on appeal.
21. Order extending time for docketing appeal.
22. Transcript of oral opinion.
23. Motion for extension of time for docketing appeal.
24. Affidavit in support of above motion.
25. Order extending time for docketing appeal.

26. Stipulation concerning copies of plaintiff's Exhibit 1 and defendant's Exhibit 2.
27. Minute order extending time to file objections and for docketing appeal.
28. Minute order dated August 5, 1948, concerning filing of bill of exceptions.
29. Order extending time to file objections and amendments to bill of exceptions.
30. Proposed amendments to bill of exceptions.
31. Stipulation concerning settlement of bill of exceptions.
32. Order approving and certifying bill of exceptions.
33. Stipulation concerning exhibits.
34. Bill of exceptions, volume one, transcript of evidence.
35. Bill of exceptions, volume two, transcript of evidence.
36. Bill of exceptions, volume three, exhibits.
37. Stipulation re exhibits.
38. Appellant's designation of contents on record on appeal.
39. This Praecipe.
40. Clerk's certificate of record.

Respectfully submitted,

/s/ EDWARD V. DAVIS,

Of Attorneys for Appellant Matanuska Valley
Farmers Cooperating Association.

Receipt of copy acknowledged.

[Endorsed]: Filed May 9, 1950.

[Title of District Court and Cause.]

APPELLANT'S DESIGNATION OF CON-
TENTS OF RECORD ON APPEAL

To the Clerk of the above-entitled Court:

Pursuant to Rule 75(a) of the Rules of Civil Procedure, as amended, the defendant-appellant, Matanuska Valley Farmers Cooperating Association, hereby designates as the contents of the record on appeal the complete record and all the proceedings and evidence in the above-entitled action.

/s/ EDWARD V. DAVIS,
Attorneys for Defendant-Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed May 9, 1950.

[Title of District Court and Cause.]

BILL OF EXCEPTIONS

Volume One

Be it remembered: The above-entitled cause came on regularly for trial on the 13th day of March, 1947, before the Honorable Anthony J. Dimond, Judge of the above-entitled Court at Anchorage, Alaska, the plaintiff appearing in person and by his attorney, George B. Grigsby, and the defendant being represented by Edward V. Davis, of his counsel, and the parties having theretofore stipu-

lated that the cause should be tried to the Court without a jury, the matter was tried commencing on the 13th day of March, 1947, and continued on the 14th day of March, on the 7th day of April, on the 8th day of April, on the 15th day of July, 1947, and the evidence was closed on the 15th day of July, 1947. During the course of the trial, certain evidence was introduced and certain exhibits were admitted into evidence on behalf of the respective parties all as will more fully appear from the following reporter's transcript of proceedings and exhibits, which contain all the evidence adduced and all exhibits admitted at the trial.

That thereupon and on the 15th day of July, 1947, the matter was continued for the filing of briefs by the respective parties and after the filing of such briefs, the Honorable Anthony J. Dimond, Judge, on the 21st day of November, 1947, rendered his oral opinion in the cause finding for the plaintiff and against the defendant and directed counsel for plaintiff to prepare Findings of Fact and Conclusions of Law and Judgment, in the matter in accordance with such opinion, all as will more fully appear from the transcript of such opinion included in the reporter's transcript of proceedings hereinafter set forth.

In the District Court for the Territory of Alaska
Third Division

No. A-4252

C. R. MONAGHAN,

Plaintiff,

vs.

MATANUSKA VALLEY FARMERS COOP-
ERATING ASSOCIATION, a Corporation,
Defendant.

TRANSCRIPT OF PROCEEDINGS

GEORGE B. GRIGSBY, Esq.,
Attorney for Plaintiff.

MESSRS. DAVIS AND RENFREW,
Attorneys for Defendant.

This cause came on regularly for trial at approximately 10:00 o'clock a.m. of Thursday, March 13, 1947, before the Honorable Anthony J. Dimond, Judge of the above-entitled court.

Opening statement to the Court was had by George B. Grigsby, for and in behalf of the plaintiff.

Opening statement to the Court was had by Edward V. Davis, for and in behalf of the defendant.

The Court: Witness may be called.

Mr. Grigsby: Call Mr. McAllister.

FRANK McALLISTER

being first duly sworn, testified for and in behalf of the plaintiff as follows: [1*]

Direct Examination

By Mr. Grigsby:

Q. State your name to the Court, Mr. McAllister.

A. Frank McAllister.

Q. You are the plaintiff in this action? You are the plaintiff?

A. No, Mr. Monaghan is the plaintiff.

Q. Oh no, you are not the plaintiff. I was a little bit confused about that. Now, I will show you this paper, Mr. McAllister, and will you look at it and tell the Court what it is?

A. It is a marketing contract signed by the president of the Board and directors and the secretary and myself entered into, I think it was '39.

Q. Marketing contract between the——

A. Matanuska Valley Cooperating Association and——

Q. Cooperative Association, is it not?

A. Cooperating.

Q. And that is your signature, is it?

A. This is my signature here.

Mr. Grigsby: Your Honor, we offer it in evidence and I will ask counsel if one of the forms can go in instead of this.

Mr. Davis: Yes. What is the date? You are not particularly interested in the dates—you just want to get one of the forms before the Court?

(Testimony of Frank McAllister.)

Mr. Grigsby: Yes. This is dated June 30, 1939.

The Court: You wish that admitted and another substituted?

Mr. Grigsby: A blank form substituted; It will answer the [2] purpose.

Mr. Davis: Yes, I have no objection to it.

The Court: This will be marked Plaintiff's Exhibit No. 1. It should be marked and then it can be withdrawn.

Mr. Grigsby: Can I have this marked as an exhibit and then substitute the copy?

The Court: Yes, I think that would be better and maybe the form could be filled in so as to correspond with the original.

Mr. Davis: Why not just offer the form as the exhibit? That is all you are after, isn't it—getting the form before the Court?

Mr. Grigsby: Yes, that's all, except I want to prove the contract has been admitted.

Mr. Davis: We have admitted that in our answer and we will admit it now, if it will help any.

Mr. Grigsby: Very well, and may the record show a blank form was substituted for the original contract?

The Court: Very well. The contract was made between Mr. McAllister and the Association?

Mr. Grigsby: Yes.

The Court: And what was the date?

Mr. Grigsby: June 30, 1939.

(Testimony of Frank McAllister.)

(Plaintiff's Exhibit No. 1 admitted in evidence.)

The Court: One more thing: I understood you to say this was [3] the contract made with the cooperative association, is that right?

Mr. Grigsby: Yes; it speaks for itself.

The Court: The defendant here is Cooperating Association. I suppose that will be explained as we go along.

Mr. Grigsby: Well, maybe this witness can do that.

Mr. Davis: I think maybe I can clear that up. The association name is "Cooperating Association." The contracts made are on the form of contract printed years ago when the name was still "Cooperative Association," but we are all talking about the same thing. They changed their name to comply with the law.

The Court: When was the name changed?

Mr. Davis: I think it was '37 or '38—I haven't the date down.

Court: I think I understand. You may proceed, Mr. Grigsby.

Mr. Grigsby: Of course, Paragraph I of the complaint alleges, "that the Matanuska Valley Farmers Cooperating Association"—which is the name of the defendant organization.

The Court: The new corporation simply used the old forms?

Mr. Grigsby: And alleges "formerly known as

(Testimony of Frank McAllister.)

Matanuska Valley Farmers Cooperative Association.”

The Court: Very well. I think I understand.

Mr. Grigsby: Well, what has been your business since you signed that contract, Mr. McAllister?

A. Well, for two or three—I think it was three years—it was primarily vegetables, and the last five years it has been /2/ [4]

Q. Where? A. In the——

Q. In the Matanuska Valley?

A. In the Matanuska Valley.

Q. And since—when did you go in the dairy business? A. Five years ago.

Q. And since then has that been your principal business? A. It has.

Q. And have you dealt with this defendant corporation with reference to the milk produced by you? A. I have.

Q. And sold them your milk? A. I have.

Q. And to no one else? A. No one else.

Q. Now, I will ask whether or not you sold your milk to the defendant under the terms and conditions of this agreement that has been put in evidence? A. I did.

Q. That's what you considered that you sold it under, is that right?

A. That's our understanding.

Q. Mr. McAllister, in this complaint it is alleged that some 19, 20—22, to be correct—dairymen assigned their certain claims against the Matanuska Valley Farmers Cooperative Association to the

(Testimony of Frank McAllister.)

plaintiff, C. R. Monaghan. Do you know anything about that? A. I do.

Q. Do you know whether or not that was done?

A. It was done.

Q. I will ask you who procured that to be done?

A. Mr. Monaghan and myself.

Q. Together? A. Had the papers, yes.

Q. And did—state whether or not you know that the persons [5] named in all these causes of action—and I might read them to you so as to get it in the record—now, you assigned your claim, did you, to Mr. Monaghan? A. I did.

Q. For the purposes of this law suit?

A. I did.

Q. In a written instrument? A. I did.

Mr. Grigsby: Perhaps counsel will stipulate that this assignment was made and show it in the record?

Mr. Davis: I wonder if the assignments themselves don't speak for themselves and if they wouldn't be the best evidence.

Mr. Grigsby: Do you know where that assignment is?

A. Well, as I recall it was left at your office.

Q. Did I prepare the assignment in a form with lines on it and give it to you? A. Yes, you did.

Q. And did Mr. Monaghan get the signatures of these men named in the complaint?

A. Yes, we did.

Q. Now, do you know what you did with them?

A. Well, Mr. Monaghan had it and, as I recall, we came to town to see you and left—you asked for

(Testimony of Frank McAllister.)

that and we left it up at the office. Now, that's as I remember it.

Q. And you don't know where it is?

A. I don't know where it is.

Q. Did you receive a letter from me, or did Mr. Monaghan show you a letter in which I cautioned you to be sure to bring it to this trial?

A. I have a letter to that effect—or Mr. Monaghan has it—I will correct that. [6]

Q. And so you don't know where it is?

A. I don't.

Mr. Grigsby: I guess I will have to take the stand, your Honor, and testify that I can't find it. You know it was executed, however?

A. I know it was executed.

Mr. Davis: Have you a copy of it?

Mr. Grigsby: I can't find any trace of it.

Mr. Davis: I don't mean the original; I mean a copy.

Mr. Grigsby: I presume it is mislaid—put in the wrong place somewhere in my office—and I probably will have to take the stand if you require strict proof that it can not be found. It is testified to here it was signed.

Mr. Davis: I don't think there is any point, your Honor, in making Mr. Grigsby take the stand and testify in effect that it can't be found. I am interested in knowing what the stipulation looks like and I can't, of course, stipulate they all signed it because I haven't seen it and don't know.

The Court: Well, the witness can testify, and

(Testimony of Frank McAllister.)

if necessary to make the record complete you may take the stand later. But go ahead with this witness and supply the defects later.

Mr. Grigsby: Now, every year have you sold all your milk——

The Court: Wait just a minute. I think the witness should testify first whether all these parties involved actually signed the assignment, if he knows. Do you know whether everyone whose claim is included in the complaint in this action actually signed an assignment of his claim to the plaintiff in this action, Mr. [7] Monaghan?

The Witness: I will have—if I could see the names——

The Court: Did Merle L. Anderson?

The Witness: He signed it.

The Court: Signed the assignment? Next is A. A. Rempel.

The Witness: He has signed.

The Court: Third is Arvid Johnson.

The Witness: He signed.

The Court: Maybe I skipped one—well, the next one is——

Mr. Grigsby: I found this in a list, your Honor.

The Court: Very well, proceed.

Mr. Grigsby: Jack Cope? A. He signed.

Q. William Ising? A. He signed.

Q. Joseph Lentz? A. He signed.

Q. Clarence Quarnstrom?

A. I know he signed.

Q. Sir? A. He signed.

(Testimony of Frank McAllister.)

- Q. Thomas Moffit? A. He signed.
Q. Paul Nelson? A. He signed.
Q. B. J. Lossing? A. He signed.
Q. Chet Liebing? A. He signed.
Q. Alvin J. Collier? A. He signed.
Q. William Lentz? A. He signed.
Q. Henning Benson? A. He signed.
Q. Walter C. Huntley? A. He signed.
Q. Lawrence Plumley? A. He signed. [8]
Q. H. S. Bauer? A. He signed.
Q. A. R. Moffitt? A. He signed.
Q. Leonard Bergan? A. He signed.
Q. Harold Thuma?

A. He signed—no, we didn't have that and present it to him at the time. It was just agreed after talking to him after that paper was handed in that he agreed to take part in the action.

Q. He has not yet signed it?

A. He did not sign, no.

The Court: What is his name?

Mr. Grigsby: Harold Thuma. Did he agree to sign? A. He agreed to take part.

Q. Did he agree to the assignment, or was the assignment delivered to me before that?

A. The assignment was delivered to you before that. He did not agree to sign, as I recall, because you said if he agreed to take part in the action it wouldn't be necessary.

Q. All right.

The Court: What is his name?

Mr. Grigsby: Harold Thuma.

(Testimony of Frank McAllister.)

Mr. Davis: The last cause of action.

The Court: Very well. Go ahead.

Mr. Grigsby: Mr. McAllister, I asked you, or started to ask you, if you, since you have been in the dairy business, have sold all your milk to the Matanuska Valley Farmer's Cooperative Association? A. I have. [9]

Q. And I believe you stated you sold it under the terms of this contract that has been introduced in evidence? A. I did.

Q. Did you ever sell them any milk for a flat price? A. I did not.

Q. Have you been advanced money when you delivered milk on the account of the purchase price?

A. I have.

Q. And that's every year? A. Every year.

Q. Now, for instance in the year 1945—the year in question—were you advanced money on account of the purchase price of the milk that you sold and delivered to the defendant corporation?

A. I did.

Q. You were? A. I was.

Q. And just tell the Court how they advanced that, periodically, and the method used?

A. Well, on the 5th and the 20th of the months we were paid the advance, whatever at the time—the price changes at times; there is a larger payment for winter milk to stimulate winter production, and it usually goes down a little bit in the summer time, but we're paid on the 5th and 20th of each month on our advances.

(Testimony of Frank McAllister.)

Q. In other words, now, do you deliver your milk or have it delivered to them every day?

A. I have it delivered.

Q. And where do they receive it?

A. At Palmer.

Q. At Palmer? And do you have a record of the poundage that you delivered? A. I have.

Q. Furnished—on each delivery do you weigh it in?

A. It is weighed in but we get the poundage on the 5th—

Q. Do you get a—

A. Twice a month—We get the weigh slip at the same time we get paid.

Q. You don't get it every day?

A. We don't get it every day.

Q. Now, you said on the 5th and the 20th they make you a payment on the milk delivered?

A. They do.

Q. Does that apply to all the months of the year? A. All the months of the year.

Q. And that goes on to and including the month of November, 1945, did it? A. It did.

Q. Now, after November 30, 1945, did you ever get any further payment for the milk you delivered to the defendant in the fiscal year of '45

A. You say after—

Q. Did you ever get any further payment than what was advanced to you monthly from December 1, '44, to November 30, '45? A. No.

(Testimony of Frank McAllister.)

Q. Now, in 1944 did you sell to the defendant under the same system? A. I did.

Q. Now, during that year did you get your payment bi-monthly? A. Yes.

Q. What you call an advance? A. Yes.

Q. Now, after the close of that fiscal year were you subsequently made additional payment?

A. I was.

Q. And in '43 were you made payments after—or did you have the same system then?

A. The same system. [11]

Q. Have you received those advances every year you have dealt with the defendant?

A. I did, up until '45.

Q. Yes, except this year? What years does that include? When did you go in the dairy business?

A. I got my first one in '42.

Q. Now, in '42, '43 and '44, of those fiscal years did you receive additional payments over and above the payments advanced? A. I did.

Q. After the books were audited, is that right?

A. Yes.

Q. And did they ever furnish you a statement of the deductions which fixed the final payment, or did you have access to the books to see that, or was it explained?

A. It was explained. We had access to the books, but I never took advantage of it.

Q. Who was the manager during those years?

A. Well, there were three, I believe. There was

(Testimony of Frank McAllister.)

Mr. Stock, and Mr. Snodgrass, and then—of course, that was this year—I guess there was just two.

Q. Mr. McAllister, do you remember being with me at the co-op office sometime last summer in which we asked for the figures—at which time we asked for the figures showing the amount of money that was advanced to the milk producers for their sales of 1945? A. I remember.

Q. I will show you this statement. Are those the figures they gave us?

A. Those are the figures.

Q. You were with me and asked for the total amount advanced [12] to the milk producers in 1945? A. Yes.

Q. Who furnished us with that?

A. Michalson. He was the accountant at that time.

Q. He was the accountant and auditor?

A. Well, they call him accountant, I think. He is not the auditor.

Q. Now, do you know what amount you were advanced, during the fiscal year 1945, being the period from December 1, '44, to November 30, '45?

A. In actual figures, I don't.

Q. I will show you this statement and ask if you have seen that before? A. Yes.

Q. And did you procure that statement?

A. From Mr. Michalson, yes.

Q. Who, at that time, was the bookkeeper?

A. Yes.

Q. And accountant at the office? Now, did that

(Testimony of Frank McAllister.)

purport to be a statement of the amount of moneys advanced to the people interested in this law suit? Is that what we asked for?

A. That was what we asked for.

Q. And this is what you got?

A. This is what we got.

Mr. Grigsby: We offer this in evidence, Mr. Davis. (Handing document to Mr. Davis.)

Mr. Davis: Is this only to be considered as to his testimony? There are one or two on this list that are not interested in this suit.

Mr. Grigsby: Well, we haven't claimed they are,—Mr. Snodgrass and, possibly, Mr. Thuma—but as to those who are [13] interested it is a statement furnished by the defendant.

The Court: Well, it may be admitted and it will be considered only as to those who are parties to this action.

Mr. Grigsby: Yes, your Honor.

(Plaintiff's Exhibit No. 2 admitted in evidence.)

(Testimony of Frank McAllister.)

Report of Milk Sold During Period from Dec. 1, 1944, to Dec. 1, 1945, by the Following Persons:

PLAINTIFF'S EXHIBIT No. 2

Name	Pounds Grade A	Pounds Grade B	Amount	Bonus	2% Reduction
1. Frank McAllister	168,842		\$10,749.83	\$ 20.90	\$ 215.02
2. C. R. Monaghan	119,488		7,852.34	23.62	157.08
3. Merle L. Anderson	130,910	8,657	9,488.77	101.04	189.79
4. A. A. Rempel	48,925		2,486.54	59.41	49.73
5. Arvid Johnson	95,567		6,421.13	122.25	128.43
6. Jack Cope	67,321		4,534.78	49.15	90.66
7. Wm. Ising	85,157		5,633.51	36.06	112.67
8. Joseph Lentz	42,856		2,887.66	16.06	57.74
9. Clarence Quarnstrom	33,595		2,618.62	16.67	52.37
10. Thomas Moffitt	81,451	1,601	5,483.40	58.11	109.66
11. Paul Nelson	36,170		1,966.25	19.27	39.35
12. B. J. Lossing	52,053		3,586.31		71.71
13. Chet Liebing	1,475	36,557	2,266.45	36.31	45.32
14. Alvin J. Collier		9,851	569.80		11.41
15. Wm. Lentz	58,303	4,219	4,090.99	14.40	81.84
16. Henning Benson		32,299	1,729.33	36.58	34.60
17. Walter C. Huntley	32,236		2,252.75	54.77	45.05
18. Lawrence Plumley		15,790	857.15		17.15
19. H. S. Bauer		6,196	353.90		7.07
20. A. R. Moffitt	63,949		4,424.54		88.50
21. Leonard Bergan		2,643	157.97		3.16
22. M. D. Snodgrass	101,927		6,824.88	78.49	136.50
23. Harold Thuma		23,004	1,319.46	21.60	26.40
	1,184,055	176,987	\$88,556.36	\$764.69	\$1,771.21

Audited Theodore Michalson (Signed)

[Endorsed]: Filed August 5, 1948.

(Testimony of Frank McAllister.)

Mr. Grigsby: I don't think it need be read now, Mr. Davis?

Mr. Davis: No, I don't think we need to read any of them.

Mr. Grigsby: Now, I don't know whether I asked this question or not, Mr. McAllister, but could you remember in 1944 what percentage of the price of your milk was paid after the close of the fiscal year? This is '44 we are talking about.

A. It was either 43 per cent or 42. It was—there was two years there—I can't say just exactly. It was either 42 or 43 per cent—and some tenths per cent.

Q. Mr. McAllister, do you know whether or not demand has been made on the defendant—well, wait a minute. I will ask you whether or not recently you asked the defendant, or its officers, for a statement of their accounts with the dairy farmers and the produce department for the years 1946 and 1945?

A. I did.

Q. And was it furnished? A. It was.

Q. Who furnished it to you?

A. Mr. Allyn. He is the present accountant.

Q. He is the accountant? I will show you this paper and ask you if that is the statement he furnished you? A. That is. [14]

Mr. Grigsby: We offer this in evidence, Mr. Davis. '46 isn't necessarily material there, but we can hardly segregate the two. Have you any objection to this going in for the purpose of showing the statement reported by Mr.—

(Testimony of Frank McAllister.)

Mr. Davis: No. I don't think it is competent as to '46, but so far as '45 is concerned, I have no objection.

Mr. Grigsby: It is taken off the books, your Honor, which will be in put in evidence, but this is probably——

The Court: It is used, as I understand, to cover '45?

Mr. Grigsby: '45. Now, I wish to——

The Clerk: What is this called?

Mr. Grigsby: It is called Plaintiff's Exhibit 3.

The Clerk: I mean, describe it—Account of fiscal year 1945 and 1946?

Mr. Grigsby: Of milk producers and others.

(Plaintiff's Exhibit No. 3 admitted in evidence.)

(Testimony of Frank McAllister.)

Plaintiff's Exhibit No. 3

	1946 Fiscal Year		1945 Fiscal Year	
	Dairy and Creamery	Produce Dept.	Dairy and Creamery	Produce Dept.
Sales	\$395,104.24	\$127,849.23	\$361,145.56	\$101,697.97
Cost of goods sold....	219,674.39	126,379.12	178,422.88	76,976.05
Gross Profit on sales	175,429.85	1,470.11	182,722.68	24,721.92
Expenses				
Operating expenses	80,925.42	25,536.27	83,807.54	40,045.42
Indirect overhead..	50,418.06	6,293.80	45,121.31	4,995.62
Net profit from operations	44,086.37	<i>30,359.96</i>	53,793.52	<i>20,319.12</i>
Rent from apartments in dairy building....	3,391.11	.....	3,207.75	.....
Department earnings	*47,477.48	<i>30,359.96</i>	*57,001.58	<i>20,319.12</i>

Condensed Profit and Loss Statement
Matanuska Valley Farmers Co-operating Assn.
For Fiscal Year 1945 and 1946

	1946	1945
Sales	\$1,060,084.19	\$1,091,439.21
Cost of goods sold	727,244.49	761,792.25
Gross profit on sales	332,839.70	374,646.96
Expenses		
Operating expenses	221,241.69	246,888.05
Indirect expenses	125,599.60	128,653.39
Net profit from operations	<i>14,001.59</i>	<i>894.48</i>
Rental income	9,616.11	3,783.75
Net profit/loss for the year	<i>4,385.48</i>	*2,889.27

* These figures fictitious in that no adequate allowance for repairs which were postponed during these years nor has any provision been made to date to meet a loan of \$200,000 due in approximately 35 more years (term 40 year).

Average price paid to
producer for milk per cwt.

For the fiscal year 1946\$7.06

For the fiscal year 1945 6.49

[Italics were shown in red.]

[Endorsed]: Filed August 5, 1948.

(Testimony of Frank McAllister.)

Mr. Grigsby: Now, I wish to read this to the Court now.

(Mr. Grigsby read first part of Plaintiff's Exhibit No. 3 to the Court.)

Q. Now, Mr. McAllister, you have testified that amount of money advanced, in payment for the goods sold, all the dairy farmers, according to the slip furnished by the bookkeeper down there, was about \$136,000, is that right? A. That's right.

Q. Now, in this statement which has been put in evidence, the cost of goods sold, dairy and creamery, is put at \$178,000 instead of 136. Can you account for the difference?

A. Well, [15] the difference is accounted for by powdered milk and butter and eggs.

Q. And now the powdered milk and butter, would that be purchased from the dairy farmers?

A. No, it would not.

Q. Where is that purchased?

A. That is purchased from Seattle—Outside.

Q. And might that difference account for other items? A. Well, it might.

Q. Purchased in connection with the operation of the creamery?

A. Purchased in connection with operation of the creamery, yes.

(Mr. Grigsby then read rest of Plaintiff's Exhibit No. 3 to the Court.)

Mr. Grigsby: I would like to state to Mr. Davis—(Consulted at counsel table with Mr. Davis.)

(Testimony of Frank McAllister.)

The Court: Court will stand in recess until 10 minutes past three.

(Whereupon recess was had at 3:01 o'clock p.m.)

After Recess

Mr. Grigsby: Mr. McAllister, I will show you this paper and ask you what that is?

A. That is a profit and loss statement that we asked Mr. Allyn to get up for us, for '44.

Q. For '44? Mr. Allyn is their bookkeeper at present? A. Yes, he is their auditor.

Q. And he furnished you with this?

A. Yes, he furnished [16] Mr. Monaghan it. I was in at the time.

Mr. Grigsby: Offer this in evidence, Mr. Davis.

Mr. Davis: Might I inquire, your Honor?

The Court: Yes.

Mr. Davis: Do you know whether or not, Mr. McAllister, this statement was made up from the audit made in the year 1944? Well, here is Mr. Allyn; I will ask him: Is that made from the audit in 1944?

Mr. Allyn: Yes.

Mr. Davis: I have no objection to it.

The Court: It may be admitted as Plaintiff's Exhibit No. 4

(Plaintiff's Exhibit No. 4 admitted in evidence.)

(Testimony of Frank McAllister.)

Plaintiff's Exhibit No. 4

Matanuska Valley Farmers Co-Op Association
Condensed Profit/Loss Statement by Department
F. Y. 1944

	Produce Dept.	Creamery Dept.
Sales	\$268,806.78	\$262,955.79
Cost of goods sold	240,106.53	129,729.54
Gross profit on sales	28,700.25	133,266.25
Operating expenses	23,600.35	45,499.92
Indirect overhead	8,999.18	24,333.97
Net earnings of department	3,899.28	63,432.36
Rents		3,528.67
Total Departmental	3,899.28	66,961.03

[Italicized figures shown in red.]

Matanuska Valley Farmers Co-Operating Association
Condensed State of Profit and Loss
F. Y. 1944

Sales	\$1,303,343.64
Cost of goods sold	950,196.04
Gross profit on sales	353,147.60
Expenses	
Operating expenses	192,820.88
Indirect overhead	104,720.57
Net profit on operations	55,606.15
Rental income	5,974.12
Net income for fiscal year	\$ 61,580.27

Subject to same qualifications and remarks as previous statement for the years 1945 and 1946.

[Endorsed]: Filed August 5, 1948.

(Testimony of Frank McAllister.)

The Court: May I ask a question while you are waiting? Referring to Plaintiff's Exhibit No. 3, Mr. McAllister, I notice one column is headed "Produce Department." What does the word "produce" include, do you know?

Witness: Vegetables of all kinds, from potatoes—

The Court: Eggs too?

The Witness: No, just vegetables of all kinds.

The Court: Where are the eggs carried in that statement?

The Witness: The eggs are carried under "Creamery."

The Court: Under "dairy?"

The Witness: Under "dairy."

The Court: All right, Mr. Grigsby.

Mr. Grigsby: Now, with reference to this paper I just handed [17] you, there is an item here "Cost of goods sold, Creamery and Dairy Department, \$129,729.54." Does that include advances made to you that year bi-monthly? A. It's in '44?

Q. In '44. A. Yes.

Q. Does it also include other goods bought by the creamery down there such as powdered milk, and so forth, as in the '45 statement? A. Yes.

Q. So you were not advanced for you milk the full sum of \$129,000? A. No.

Q. Now, those advances for the year '44 were during the period expiring November 30, 1944?

A. Yes.

(Testimony of Frank McAllister.)

Q. After that did you receive additional payments? A. I did.

Q. And substantial additional payments?

A. Yes.

Q. What percentage?

A. It was either 43 or 42—42 or 43 per cent.

Q. Now, was that paid to you as a dividend?

A. It started as a pool—as final—or it started first as a first payment on the 1944 pool, and the second was the final payment on the 1944 pool.

Q. Now, when you received these payments during the year, you stated you got the poundage and you got a check bi-monthly, is that correct?

A. That is correct.

Q. Drawn on a bank?

A. Well, we would get a voucher. We don't get a check—voucher for it and we cash them at the office.

Q. Down there? A. Down there. [18]

Q. Have you any of those vouchers with you?

A. No, they are all cashed.

Q. Mr. Monaghan, have you any vouchers?
(Got something from man in back of court room.)

I will ask you to look at these vouchers and state whether or not those were what you referred to as the vouchers you got, or part of the vouchers?

A. That is on the pools, yes. That is part—the check is attached to that.

Q. The voucher is attached to that?

A. The check is attached to this voucher, or vice versa.

(Testimony of Frank McAllister.)

Q. Well, you said "check"; I asked you what bank and you said it was a voucher.

A. Well, you asked, as I recall, were the checks paid monthly?

Q. Yes.

A. Well, we don't have these on the checks paid monthly. We just have a voucher—on the pool. This is on the pool.

Q. Well, bi-monthly you went to the office, is that right, and received a voucher—is that right, for the milk you had sold?

A. It isn't a check, you see.

Q. A voucher? A. Yes.

Q. And were these stubs attached to vouchers?

A. No, not on the monthly checks. Those are the pool checks. In other words, we don't get checks that can be cashed at any banks on a monthly basis only, but when they pay off the pool they give us a check which is signed by the manager and they can be cashed [19] at a bank. But on monthly checks we just get a voucher and you cash them—you can't cash them at a bank, but you can cash them at the office.

Q. But there was a check attached to each of these?

A. Oh, those—those are on the pools, as they paid the pools out.

Q. Do you have your stubs corresponding to these at home? A. I have.

Q. Mr. McAllister, during the recess I had a conversation with you about the demand being made

(Testimony of Frank McAllister.)

for this profit of \$57,001. Now, have you an association of dairymen? A. We have.

Q. And can you state whether or not that association appointed a committee to present this claim to the defendant?

A. Well, this association has been formed quite recently and this came up—we had a dairy group acting as more or less representative of the dairymen that we met periodically, but until—oh, probably three months ago, we didn't incorporate, or start to incorporate, as an association. I mean, it's—before that time we just had a group of dairymen working together, and that we did, meeting with the Board, ask or demand this payment.

Q. And you demanded what?

A. The payment of the pool.

Q. Who did you make that demand of?

A. There was four—

Q. The Board of Directors?

A. There was four of the Board of Directors.

Q. Is that a majority of the Board of Directors?

A. It is.

Q. Who was there?

A. Well, Virgil Eckert, and Stock and [20] Clarence Huffman—I can not recall the other one, though.

Mr. Grigsby: I think that's all. Mr. Davis may have this witness. I will ask permission to recall him if I have overlooked anything.

The Court: You may examine, Mr. Davis.

(Testimony of Frank McAllister.)

Cross-Examination

By Mr. Davis:

Q. Now, Mr. McAllister, you have been a member of the co-op, then, since about 1939, haven't you?

A. I have.

Q. And for the first three or four years you spent a major portion of your effort on the produce department? A. Yes.

Q. And during that time were you delivering any milk at all? A. No.

Q. You started delivering milk along about 1942? A. I did.

Q. And since that time I think you said that a major portion of your effort has gone toward milk, since 1942? A. That's correct.

Q. Now, you also, though, still deliver produce, don't you? A. No.

Q. How about 1945? A. I did.

Q. Didn't you deliver considerable produce to the co-op in 1945? A. \$600.00.

Q. Weren't you one of the larger of the lettuce producers that year? A. I was not.

Q. \$600.00 worth altogether?

A. It was approximately that. It could be some cents or—— [21]

Q. Now, I think you stated awhile ago that you have been paid, from time to time you have been paid advances. I wish you would tell the Court a little about the mechanics of getting those advances, as you call it.

(Testimony of Frank McAllister.)

A. I don't believe I understand what you mean.

Q. Well, I will try to make it clearer: How do you go about getting these bimonthly advances you are talking about—twice monthly advances?

A. How go about it? I don't go about getting them. You are just paid your checks, if that is what you mean.

Q. All right, that is what I mean. You don't have anything to do with getting those at all; they just automatically come, don't they?

A. They do.

Q. According to the amount of milk you have delivered that month? A. That is correct.

Q. Do they mail them to you, or send them with your truck driver?

A. No, they are left at the creamery and you go to the creamery and get them.

Q. And they are, Mr. McAllister, based on the milk you deliver in that particular two weeks, aren't they? A. That's correct.

Q. At a fixed price, are they not?

A. Not a fixed price.

Q. What do you mean by, not a fixed price, now? How do they go about fixing these so-called advances?

A. Well, that is on a fixed price. You are advanced so much for a hundred pounds of milk. [22]

Q. That's right. Now, what you mean to say by "not a fixed price" is that it varies from time to time? A. No.

(Testimony of Frank McAllister.)

Q. What's that?

A. I don't mean it that way. I mean it is an advance.

Q. Well, you concluded it was an advance, all right, but I want the Court to know what is done so we will see what he thinks it is. Now, you don't go to the Board and tell them, each two weeks: "Here, I need so much money" and they give you so much money? A. No.

Q. They just pay you a fixed price per hundred pounds for the milk delivered in that two weeks, isn't that right? A. That is correct.

Q. And then you mentioned awhile ago that in the winter time you get some kind of an incentive bonus. That's correct, isn't it?

A. That's correct.

Q. In the year in question here—in 1945—that bonus amounted to 50c a hundred pounds, I believe, between, say, November and February of 1944—November '44 and February '45, isn't that right?

A. I don't recall the exact figure, but it is approximately that.

Q. All right, without recalling the exact figure, you do get a winter bonus of some kind?

A. That's right.

Q. As an incentive to produce more milk during the winter when it is short?

A. That's correct.

Q. Have you ever been charged any interest on these so-called [23] advances? A. Have we?

Q. Have you? A. No.

(Testimony of Frank McAllister.)

Q. Have you ever been charged a service charge for handling your products?

A. What do you mean by—

Q. Well, I will try to make it clear, now: You gave a statement—you identified a statement here a minute ago that had the amount that you received on that during the particular year in question. The amount you received—I believe, Mr. McAllister, that you received \$9948.57 in money for the year 1945. That is substantially the right figure, isn't it?

A. That is approximately.

Q. Then in addition to that—I believe you have somebody else haul your milk to town?

A. That is right.

Q. And your milk hauler also is paid his hauling fee out of your money, isn't he?

A. That is correct.

Q. So you received that in addition to the \$9,948 that you received in money?

A. That is correct.

Q. And then you bought some items at the store or at the garage that were charged off to you as merchandise deductions?

A. I bought that at the creamery.

Q. At the creamery itself? A. Yes.

The Court: What was that? I didn't get it.

Mr. Davis: In this particular year, your Honor, he was charged \$16.20, I think it was, for something he bought at the creamery that was taken out as a deduction—a merchandise [24] deduction.

The Court: Very well.

Mr. Davis: So you actually, then, have received

(Testimony of Frank McAllister.)

—you add up all these various charges I have mentioned here, the money you were paid in cash, the money that was paid to your hauler and the money that was paid for the merchandise deductions—add all those together and you come out at the figure that was on the sheet you presented awhile ago as the payment made to you for 1945. That's correct, isn't it? A. That's correct.

Q. Now then, you have been largely a milk producer during the years 1942 through '46?

A. Well, in '42 and '43 I sold considerable vegetables, but largely, there was milk.

Q. Yes, my choice of words was unfortunate there. You have sold milk to the co-op since '42?

A. Yes.

Q. I didn't mean to try to confuse you. Now, during that time you apparently are perfectly satisfied with the settlement that has been made up to the year '45? A. That is correct.

Q. Is that correct? A. That is correct.

Q. Do you know how the dividends, or whatever you may call them—pool checks—whatever they may be, at the end of the year—do you know how those figures were arrived at?

A. I know only what we were told at the regular meeting of the audit. I know how it was arrived at, is that what you mean?

Q. Yes, that's what I mean. You do know how it was arrived at?

A. I do know how it was arrived at. [25]

Q. Now, there is an item of two per cent that

(Testimony of Frank McAllister.)

they have been deducting from your milk, isn't there? A. That's correct.

Q. According to the terms of some procedure they have set up? Can you tell the Court whether or not that two per cent is figured on the money you have received, or on the gross price of the milk sold to me as a consumer, for instance?

A. It is on money received by me.

Q. On money received by you? All right, and at the end of 1943 you got some money back; you don't remember whether it was, I think you said, either 43 or 44 per cent?

A. It was in the neighborhood of that.

Q. One year you got 43 and one year you got 44, I think?

A. I think I said 42 and 43, but it is in the neighborhood.

Q. Yes, I am interested here in the procedure rather than in the exact amount.

The Court: Are you talking about '43 now?

Mr. Davis: '43 and '44, your Honor.

The Court: From December 1, 1943 to November 30, '44?

Mr. Davis: No, when I say "'43" I mean beginning December 1, '42—that would be the fiscal year, and then fiscal '44—and fiscal '45 is the one we have under discussion here.

Do you know what that percentage that you got was based on in fiscal '43 and fiscal '44? Was the percentage based on the amount that you had previously received?

A. Why, it was based on a dollar basis. It was

(Testimony of Frank McAllister.)

based on the amount of milk which we [26] had sold on a dollar basis.

Q. Yes, the amount of money you had previously received from the milk? A. That's correct.

Q. How many men are there in the dairymen's association?

A. Well, I could just give you approximately—39 or 40.

Q. Well, there's only 35 or 40 milk producers altogether, aren't there?

A. Maybe I didn't understand your question.

Q. I want to know how many men there are in this dairymen's association you are talking about.

A. Well, I don't really know. The last meeting there was some more—which was just two or three days ago—some more come in and I don't know how many.

Q. Would it be all the fellows involved in this suit? A. No.

Q. Would there be some people who aren't involved in this suit but who are milk producers?

A. There would.

Q. Would it be about half the total dairymen in an association?

A. It may possibly—I doubt if it is quite half. It may be.

Q. Approximately 15 or 20 people in your dairymen's association? A. That's correct.

Q. Now, when you and your committee went and talked to the Board of Directors was that a Directors' meeting? A. No.

(Testimony of Frank McAllister.)

Q. Just an informal meeting?

A. Just an informal meeting.

Q. And you told them you want this \$57,000?

A. Correct.

Q. And what did they say?

A. Well, there was considerable said—I don't recall all that was said. [27]

Q. What was the purport? I don't expect you to recall the conversation.

A. Most things I remember, was one of the facts that the Board felt that actually—the members there felt that actually the money was coming to the dairymen, but they didn't know where the money was coming from. They didn't know whether they could morally, or according to the contract, pay it or not.

Q. In other words, it was something to this effect, wasn't it: We would like to see you fellows get a dividend here, but we have had losses in other departments, obligations to meet and we have no money to pay——

Mr. Grigsby: Object to the question, your Honor, as apparently a trick question incorporating the word "dividend" and trying to trap the witness.

The Court: Overruled.

Mr. Grigsby: The opening statement of counsel has stated that what they got was in the way of a dividend. Now he wants this witness to testify to it inadvertently. Let me caution the witness.

Mr. Davis: We can call it something besides a dividend, your Honor.

(Testimony of Frank McAllister.)

Mr. Grigsby: Let's be fair.

Mr. Davis: It wasn't intended as a trap question.

Mr. Grigsby: He can ask leading questions, of course, but I can see the purpose—to make him testify he got a dividend.

The Court: Objection is overruled. You may answer.

The Witness: Would you state the question? I don't—

Mr. Davis: Will the reporter read the question?

(Reporter read question.)

The Witness: Well, as I recall it, as I stated before, the Board member that spoke stated that he felt morally we were entitled to the money, but he couldn't see where the money was coming from and didn't know how it could be paid.

Q. Do you remember who of the Board made that statement?

A. It was either Virg Eckert or Mr. Stock. Both of them spoke on the question and it has been considerable time ago—almost a year ago—and it is hard to recall just exactly how that has come about.

Q. Mr. McAllister, both of those men in their own right are milk producers, aren't they?

A. No, Mr. Stock isn't a milk producer.

Q. He has been one, hasn't he? A. Well, it wouldn't amount—if he produced any, it would be very, very small. He may have produced a few hundred pounds.

Q. Mr. Eckert is a milk producer now?

A. He is a producer, yes.

(Testimony of Frank McAllister.)

Q. Now then, Mr. Grigsby asked you a question, as I remember it, about this last exhibit he put in—Exhibit No. 4, I think it is—and he asked you about the statement in there as to cost of goods sold, as to whether or not the dairy farmers got all that money, and your answer was that they did not—that other things [29] went into that cost of goods sold? Now, among the other things that went into that cost, was eggs, isn't that right?

A. That is correct.

Q. In other words, the eggs are handled as a part of the dairy department?

A. That's correct.

Q. And any purchases that were made for the creamery for the manufacture of ice cream or—

The Court: Just a minute. Will you close the door? It is hard to sort out this noise.

Mr. Davis: The manufacture of ice cream or other creamery products, they are also included in that figure, aren't they, in the costs of goods sold?

A. That is correct.

Q. Your payments to the dairymen, whether we call them dividends or pools or payments on pools or payment for milk, or whatever, they are part of that cost of goods sold too?

A. That's correct.

Q. And you are quite sure that all of these plaintiffs except Mr. Thuma signed that assignment?

A. That is correct.

Q. Does that mean, Mr. McAllister, that you have no interest in this suit any more, or did you just assign it for collection? Supposing Mr. Monag-

(Testimony of Frank McAllister.)

han gets a judgment in this case, is the money his or is it to be split according to what you each feel you have coming?

A. Well, I assumed that it was to be split according to what we have coming.

Q. In other words, you have assigned these [30] claims to him so he could bring the cause of action?

A. That is correct.

Q. Because you didn't want to bring 22 different suits? But you still have an interest in the result of this suit? A. I have.

Mr. Davis: Pardon me a minute, your Honor, please. That's all, Mr. McAllister.

Redirect Examination

By Mr. Grigsby:

Q. Mr. McAllister, when you started delivering milk to the defendant between the period November 30, '44 and to December 1, '44—or December 1, '44 to November 30, '45, you have stated that you got payments biweekly, and Mr. Davis got you to say that you got a fixed price. Now, did you get a fixed price or a fixed proportion of it—or did you get anything fixed at all? Was so much per dollar given you? In other words, did you agree on the price of your milk? If you brought in a hundreds pounds of milk, did you agree on the price at the time you got that payment?

A. We didn't agree to the price. It was a price—as sales—the way it goes, they're going to pay so much as an advance——

(Testimony of Frank McAllister.)

Q. And the balance according to what terms?

A. It has always been that all money made over—that is, what we have been told—it has been explained to us, that all money made over the actual operating cost would be returned to the dairymen. That is the conditions and that's the way we have always understood it. That's the way it has been explained to us.

Q. By whom explained?

A. Mr. Stock was the one, when he was [31] manager, more or less set up this program and he explained that, as I recall, at the dairy meeting. Group of dairymen were called together; there was a little dissension over the price of milk, and Mr. Stock told us at that time that he couldn't see why there was any objection to the price of milk, that even if they had to cut the price of milk a small amount that regardless it wouldn't make any difference because all the money made over the actual operating cost would come back to us, as temporarily if they cut the price of milk we would still get the same amount.

Q. You mean if they cut the amount of advance payment?

A. If they cut the amount of advance payment we would still receive the same amount of money.

Q. Now, were you ever told by any of the Board of Directors that they felt you were entitled to a dividend in some way? Was the word "dividend" ever used?

(Testimony of Frank McAllister.)

A. I don't recall of ever using the word dividend—I never heard of it.

Q. Did anybody ever tell you in previous years to '45 that the payments made after the fiscal year were a dividend? A. No.

Q. Was it the balance of the purchase price of your milk?

A. It was, and they have called it "overage"—at different times they have called it overage.

Q. Now, this contract reads, among the deductions from the gross receipts of sales of your produce, which is milk, one of the deductions is the 2 per cent of the gross sales price received for the products of said member. Now, they made a two per cent [32] deduction? A. That's correct.

Q. Now, in answer to Mr. Davis's question you said that that was two per cent of what you received. Now, this contract which is in evidence says it is two per cent of the gross sales price received for the products of said member. Now, do you know definitely which is correct—whether they deducted two per cent of what they paid you, or two per cent of what they received on the re-sale?

A. It was two per cent of what they received.

Q. Then you were mistaken in answering Mr. Davis's question?

A. No, we don't get two per cent on the gross sales; it is two per cent on what we sell on a dollar basis. In other words, if our check is a hundred dollars, they take off on a hundred dollars. It is not on the gross sale. The gross sale, I don't know—

(Testimony of Frank McAllister.)

probably it would come to \$3.00 or \$4.00 if it was on the gross sale, but it is on a dollar basis—two per cent.

Q. Then in that respect they haven't conformed to this contract? A. That's correct.

Q. What is that? A. That is correct.

Q. Now, Mr. McAllister, you have stated that a part of this cost of goods sold, which is in the statement admitted in evidence, includes—that is, cost of goods sold for the dairy—for the milk farmers—includes eggs, is that right? A. That's correct.

Q. And did it also include powdered milk that they bought [33] Outside and mixed with the new product? A. That's correct.

Q. Now, do you know whether those expenditures were charged to you under the head of operating expenses?

A. I am not sure just exactly how that is—

Q. Now, you know that they charged you with a sum of—you milk farmers in the sum of \$83,807.54 under what they call "operating expenses?" You know that, don't you? A. Yes. Yes.

Q. And do you know from your examination of what data has been furnished you and from talking with the management down there whether that \$83,000 refers to the operating expenses of the dairy and creamery?

A. What was the figure again?

Q. Does that \$83,000 mean the expenses of operating the dairy and creamery?

A. That is correct.

(Testimony of Frank McAllister.)

Q. Now, have you ever gone into detail about what that \$83,000 includes?

A. Well, yes, we have discussed it a number of times.

Q. Well, does it include the expense of operating the creamery down there at Palmer?

A. It does.

Q. And does it include the salaries and wages paid in the operation of that creamery?

A. It does.

Q. In this audit of 1945 which I just got from Mr. Allyn is the item "salaries and wages, \$32,869.73." Do you know about how many people are employed there, in operating——?

A. What is that, 32,000?

Q. \$32,869.73. Is there a manager of [34] the dairy and creamery? A. Yes.

Q. Does he get a salary? A. Yes.

Q. And how many people are employed at the dairy and creamery? A. At Palmer?

Q. At Palmer?

A. Four, and sometimes five.

Q. How many up here?

A. Well, I am not familiar exactly. There's either three or four here.

Q. Have you made inquiry into what that \$83,807 which is charged to you comprises?

A. Well, in discussing it last spring with the Board we discussed what that implies, but as I have to state that has been considerable time ago and figures don't remain in my head quite that long.

(Testimony of Frank McAllister.)

Q. Well, from your conversation with the management, or in your conversations with the management, does that operating expenses include the cost of supplies, such as powdered milk, eggs and everything used and consumed in connection with operating the dairy?

A. No, not in the 83,000—I don't believe it is included.

Q. What's that?

A. The meat—I mean, the powdered milk and butter and those eggs are not included in the cost of the \$83,000. That's the direct overhead, or the cost of operating the dairy.

Q. Well, in operating the dairy, they have to buy commodities, don't they? They have to buy powdered milk, don't they?

A. I don't believe that comes under [35] the direct overhead.

Q. Well, what would the item "Supplies, Dairy and Creamery, \$25,752" mean? What supplies would cost that?

A. Well, that would be powdered milk and butter and eggs.

Q. Well then, that is excluded, isn't it?

A. Well, I didn't understand it.

Q. Well, have you ever been in that place?

A. Yes.

Q. Do you know what supplies could be bought that would cost \$83,000 if you didn't count powdered milk and butter and eggs?

A. I—no, I don't.

(Testimony of Frank McAllister.)

Q. Do they ship in butter from Outside and use it down there? A. That is correct.

Q. And mix it? A. That is correct.

Q. Now, there is charged to the operations of the dairy and creamery and deducted from your gross profit, \$552.90 under the head of "Advertising." Are you familiar with that deduction or expense?

A. Yes, I know.

Q. That is charged as an operating expense?

A. Yes.

Q. There is some advertising done directly for the dairy and creamery, is that right?

A. That is right.

Q. "Commissions, \$652.35"—do you know what those are?

A. I am not familiar with that, no.

Q. "Delivery Expense, \$41.50"—do you know what that could refer to?

A. I can't—it's too small for any delivery that I know of, so I wouldn't know.

Q. Now, there is an item under the heading of "Operating Expenses" for the dairy and creamery, \$8,442.21, "Depreciation." Of course, you don't know how they base that, do you?

A. Well, they base it on the original cost of the building.

Q. And so much a year depreciation?

A. So much a year depreciation.

Q. Now, and you are charged with "Dues and Subscriptions, \$15.00." What is that?

A. Well, subscriptions, I presume, would be

(Testimony of Frank McAllister.)

gifts the co-op see fit to make to some organization or somebody in need.

Q. Now, you are charged with fuel consumed, \$2209. Now, do you know what that refers to?

A. No, I don't.

Q. What fuel do they use there to operate that?

A. I was always under the impression—oh, that's the complete dairy. The dairy in Anchorage uses fuel, but the dairy in Palmer doesn't.

Q. Doesn't use fuel?

A. Their heat and light comes from the power house—or their heat and steam.

Q. All right, now, "Garbage and Ash Disposal, \$15.00." There is some garbage and ash disposal?

A. Yes.

Q. "Gas, Oil and Grease, \$2252?" A. Yes.

Q. What does that mean, gasoline?

A. That's gas and grease for the owners of the trucks that hauls the milk, I presume.

Q. There is an item of Laundry, \$227. Now, "Lights, Power and Heat, \$3,627"—now, that comes from the power plant, doesn't [37] it?

A. Yes. Well, not the light—the light doesn't come from the power house, but the heat—

Q. Where does the light come from?

A. It is bought from the Matanuska Valley Electric Association.

Q. Now, you are charged with light, power and heat, \$3627. Now, that \$3627 includes power from the power house? A. That's right.

(Testimony of Frank McAllister.)

Q. Do you know, is that a bigger amount than the lights—the light bill?

A. No, the power would be more than the lights.

Q. That's what I say: The power is a great deal larger amount than the light bill?

A. Yes.

Q. "Miscellaneous Expense: \$234; Repairs and Maintenance, \$5925; Rent in Anchorage, \$542"—what is that?

A. Well, that is, I presume, the cost of the lease on the land that the creamery building is on.

Q. The co-op owns the building, doesn't it

A. Yes—got a lease——

Q. You think the 542 is the rent for the land? "Salaries and Wages, 32,000"; "Small Tools, 184"; "Supplies, \$25,752.07";—now, could that include anything else, or must that necessarily include the powdered milk, the butter and eggs?

A. Well, I couldn't be sure of what it all included.

Mr. Grigsby: Well, I think that's all.

Recross-Examination

By Mr. Davis: [38]

Q. Mr. McAllister——

The Court: Do you wish to suspend until we take the recess?

Mr. Grigsby: If you Honor please, I would like to state that the dairymen who are here have a great deal of difficulty getting back and forth over the road and don't like to drive in the dark, and also

(Testimony of Frank McAllister.)

like to get down there in order to do their milking at night, and they requested an adjournment at 4:30, if possible, and we can shorten up the recess tomorrow correspondingly; but it is very dangerous driving in the dark.

The Court: Very well, you had better proceed, then, I guess.

Mr. Grigsby: So I thought we better proceed.

Mr. Davis: Mr. McAllister, you have been on the Board of the co-op? A. I have.

Q. You were on from the first part of '42, I believe, until the first part of '43?

A. That is correct.

Q. So you know pretty well how these things are handled, don't you? You were a member of the Board; you know how the thing operates?

A. You mean the co-op operates?

Q. Yes. A. Yes.

Q. Now, there hasn't been any question in your mind at all, has there, of what was being paid from time to time for milk? You have known how much a hundred pounds was being paid—or, if you would rather, advanced? There hasn't been any doubt in your mind about it?

A. Not as far as advance was concerned, no. I knew what we was going to get. [39]

Q. Yes, if you call it an advance or if you call it a payment, still you knew what it was going to be?

A. We would have to know what it was going to be.

(Testimony of Frank McAllister.)

Q. When a change was made all the milk dealers knew it, didn't they? A. Yes.

Q. At any rate, you did? A. I knew.

Q. So, when you testified a little while ago for Mr. Grigsby that you didn't know how they arrive at that, you have known all the time how they arrived at this figure, whether it is an advance or a payment, haven't you?

A. I don't believe I get it yet. Would you explain?

Q. Well, I am not trying to confuse you by trying to get you to say what you have isn't an advance. I say it is a payment and you say an advance, and I am not trying to get you to take my interpretation, but whatever it may be called, you have known all the time how that was figured? It was a definite amount per hundred pounds of milk, wasn't it?

A. It was a definite amount of money for the milk as it was received.

Q. And that price has changed from time to time since you have been in the milk business?

A. It has.

Q. It is considerably higher than it was when you first started producing?

A. Yes, that is correct.

Q. Now, you have already told me about this winter bonus business. You don't remember how much it was, but you know you [40] were paid a winter bonus? A. That is correct.

Q. And that has been true every year, I believe?

(Testimony of Frank McAllister.)

A. I wouldn't go so far as to say that, but practically every year. I don't know whether in '42 a winter bonus was paid.

Q. Well, anyway, since you have been a milk producer? A. Practically all the time.

Q. Now, while you were on the Board, you were interested in the dairymen's end, of course, because you were a dairyman, is that right?

A. That's right.

Q. I would like to ask, Mr. McAllister, if you remember a meeting held by the Board on February 10, 1943 where the following action took place:

"The meeting was again called to order at 8:30 P.M. with the same Directors present.

"In order to allow further discussion with dairymen on milk prices, a motion was made by Snodgrass, seconded by McAllister, that subject to confirmation at the next meeting, the following schedule of milk and cream prices be established, effective Dec. 1, 1942:

"Grade A Whole Milk: \$5.10 per cwt for 4% milk with surplus butterfat at current landed cost of butter.

"Grade B Whole Milk: \$3.75 per cwt for 4% milk with surplus butterfat at current landed cost of butter.

"Grade 1 Sweet Cream: 10c per pound over landed cost of butter. [41]

"Grade 2 Sour Cream: Landed cost of butter.

"Motion carried."

Do you remember those proceedings?

(Testimony of Frank McAllister.)

A. Well, no, I just—that's been quite a while and I don't remember.

Q. Well, do you remember taking part in a meeting where that kind of a discussion took place?

A. I remember something come up over arrangement over the price, but I don't recall.

Q. It has been too long ago?

A. It has been too long ago.

Q. If the minutes so state, would you say that the minutes are correct?

A. Yes, I would say the minutes are correct.

Q. Now then, calling your attention to the next meeting of the Directors held February 13, 1943, I will skip the part which has to do with hatchery and chickens:

“ * * * Motion by McAllister, second by Brix that the new schedule of milk and cream payments be confirmed. Motion carried.

“Motion by Brix, seconded by Snodgrass, that a monthly bonus of 25c per hundredweight of whole milk be paid to producers who, during any month between Dec. 1 and May 31 of each year, bring in 80% or more of their monthly average for the remaining six months of the year. Motion carried.”

Remember anything about such a discussion?

A. I remember the 80%, yes; I remember the 80%.

Q. I presume your testimony would be the same on that question: [42] if the minutes so show you you would say they were correct?

(Testimony of Frank McAllister.)

Mr. Grigsby: If the Court please, he didn't keep the minutes. That is an improper question.

The Court: Objection is sustained.

Mr. Davis: Do you remember anything about that meeting?

A. I recall the 80%. There was something on the 80%. Now, that's—but I don't recall exactly what was taking place there; I don't remember the words said or I can't recall what was said.

Q. Now then, I started to ask you awhile ago and got off on something else and didn't finish: Have you ever been charged any handling fee for handling your milk? A. Yes.

Q. Would you tell us what that fee is and how it works?

A. Well, the handling fee, as I have always understood it, is all cost in the operation of a dairy-creamery.

Q. All right now, have you as an individual ever been charged anything by way of a handling fee for handling your milk?

A. Well, isn't that a handling fee? I mean, it is a handling fee, as far as I—that would be the way I would interpret it.

Q. Well, that's the cost of doing business. Now, I want to know if you have been charged anything besides that cost for handling your milk? Have you ever been charged, say, a flat fee for a hundred pounds for handling your milk? A. No.

Q. Have you ever been charged a fee for handl-

(Testimony of Frank McAllister.)

ing your milk on any other basis, with the exception of this cost that you mention?

A. I don't recall of any other cost, no. [43]

Q. And when you said a minute ago that you have been charged a fee you mean that you, as one of the dairymen, has been charged a proportionate share of operating the dairy and creamery end?

A. Yes, that is correct.

Mr. Davis: That's all, Mr. McAllister.

Redirect-Examination

By Mr. Grigsby:

Q. Now, Mr. McAllister, do you know whether your milk that you have sold the defendant during the years you have sold them milk, was co-mingled with that of the other dairymen? A. Yes.

Q. And re-sold? A. Yes.

Q. So, there never was any separate charge made to you for handling your particular milk?

A. No.

Q. Except the hauling of it to the place you delivered it—that was charged to you?

A. Yes, hauling it to Palmer.

Q. After you delivered it, then, expense for handling, processing, selling and all other expenses connected with the final disposition of it were charged to all the dairymen as a pool, is that not so?

Mr. Davis: You are putting words in his mouth, now, Mr. Grigsby.

Q. (By Mr. Grigsby): All right. That's what

(Testimony of Frank McAllister.)

you understand the charge of \$83,000 includes, is it not—the handling charge?

A. The handling charge, yes.

Q. In other words, this contract recites: “ * * * reasonable [44] charges for the services of receiving, handling and selling said agricultural products * * * ”

A. That’s the way it has been understood.

Q. And under that head you have been charged \$83,700 approximately? A. That’s right.

Q. And then you have been charged—do you know about what you have been charged indirect overhead?

A. Well, I think it was 45,000 in ’45.

Q. Yes. Now, do you know as a fact, Mr. McAllister, that that handling charge which I refer to as operating expenses of the dairy, and the handling charge and operating expenses of the other units, plus what they call the indirect overhead—does that constitute all of the expense that there is?

A. In regards to—?

Q. The operation of the whole business?

A. As far as I know, the direct and indirect overhead—that is your question?

Q. That is the total expense?

A. That is the total expense.

Q. You know that you are charged with approximately 83,000—you dairymen—operating expense, don’t you? A. Yes.

Q. And you know you are charged approximately 45,000 indirect overhead? A. Yes.

(Testimony of Frank McAllister.)

Q. And there isn't any other expense than those two items, is there? A. No.

Mr. Grigsby: That's all. Have you your stubs corresponding to these?

A. I haven't them with me. [45]

Q. Have you them at Palmer?

A. I have them at Palmer.

Q. And have you the stubs of the checks? You say there were checks attached to these stubs?

A. No, the co-op has those stubs.

Q. But there were checks?

A. There were checks attached to them.

Q. But the biweekly—or bimonthly payment, they were just vouchers?

A. More or less a voucher.

Q. Have you those?

A. No, you turn them in as you cash them like a check.

Q. Did you keep any stub?

A. There is no stub to those.

Mr. Grigsby: That's all. You bring what you have tomorrow. A. All right.

The Court: That is all, I think, Mr. McAllister. Another witness may be called.

Mr. Grigsby: Mr. Monaghan.

C. R. MONAGHAN

being first duly sworn, testified in his own behalf as follows:

Direct-Examination

By Mr. Grigsby:

Q. State your name?

A. C. R. Monaghan.

Q. You are the plaintiff in this action?

A. Yes, sir.

Q. I will ask you whether or not the last name on this list was the Thuma—the one mentioned here as not having signed?

A. Yes, sir, I believe it was. [46]

Q. State whether or not he authorized you to count him in with this law suit same as the rest?

A. He stated afterwards he would have been willing to join.

Q. Was that before the suit was commenced?

A. Yes, it was after I had delivered the list to your office.

Q. And before the suit was commenced?

A. As I remember it, yes.

Q. Now, you remember you instructed me after you gave me this list to drop the name of Snodgrass because he had become a member of the Board? Do you remember telling me that?

A. Well, he stated he didn't feel like he wanted to put his name—join the suit.

Q. Did he state that as a reason, that he became an official or member of the Board of Directors?

(Testimony of C. R. Monaghan.)

A. Well, he had been manager in '45 and he didn't feel——

Q. Very well. And was it at the same time that the man Thuma authorized you to count him in?

A. About that time, yes.

Q. And you neglected to have him sign?

A. Yes. I had already turned the slip in at the time I contacted him.

Q. All right now, Mr. Monaghan—we haven't very long, so I will show you these slips; is that what they are?

A. Well, there is one of them is for 1942's final payment on the milk pool.

Q. Now, all right, when did you get this?

A. It says here the 4th and 24, 1943.

Q. Well now, what's the modus operandi of your getting that? [47]

A. Well, that was after their final audit and they had got the check of the year's——

Q. Was there a check attached to this?

A. Yes, sir.

Q. And now, is this—do you know whether or not that is a final payment?

A. As I remember that was the complete payment on that one.

Q. Now, for what year's operations?

A. '42—fiscal year '42.

Q. And it is given you on the 24th of April, '43?

Q. After the audit? A. That's right.

Q. And that is a payment on butter fat you sold them in 42?

(Testimony of C. R. Monaghan.)

A. Yes, that's right.

A. Milk, principally—possibly some butterfat.

Q. Well, this says 2639 pounds butterfat?

A. Well, I guess I did sell them some cream at that time.

Q. Well, that was sold to the dairy?

A. Uh-huh.

Q. Now, here's one that reads: "Final Payment, Milk and Cream Pool, total amount purchased, \$5903.09." There is no date on that.

A. Well, here's the first one that goes with that. I believe that's '43; one's for '43 and this one for '44.

Q. Well, now, this one has no date on it.

A. I remember the figures. That's 20% was the first one and the other one is for the second payment, or final.

Q. Now, this one reads: "Second 'Milk Pool' Advance: Total amount purchased, \$5903.09; 20% of 'Dollar Value' purchased Less: [48] 2% Statutory Reserve; Amount of Second Advance, \$1,157.01." Do you know what year that was for?

A. I would have to check with the co-op's books to show whether that was '43 or '44. I got them—I have them for the three years and I can't remember for sure whether that is '43 or '44. These are '43 or '44.

Q. Well, now, how long have you operated down there?

A. I believe I started delivering milk to the creamery, I believe it was in the spring of '42, as

(Testimony of C. R. Monaghan.)

I remember it. I had, previous to that, I had a bottle route in town.

Q. Now, you heard Mr. McAllister's testimony with reference to receiving payments on account bimonthly—twice a month? A. Yes, sir.

Q. Is that the way you got paid?

A. That is right.

Q. Well, now, was the price of your milk in dollars and cents ever fixed before the audit was made?

A. We was—I was always of the understanding that this was an advance we was receiving each pay—5th and 20th of the month—and it was on a pool basis—that we would know what we got after the audit. That is our final payment was——

Q. When you delivered your milk you got money, didn't you, twice a month?

A. Yes, sir.

Q. On your deliveries for the previous half a month? A. That's right.

Q. Now, when you did that, did you know what the price that you were ultimately to receive for your milk was—the total [49] price was to be?

A. I did not.

Q. What did that depend on?

A. Depended on the audit after the books was gone over and the——

Q. Did you sign one of these contracts?

A. Yes, sir.

Q. You have read this, haven't you—this contract? A. Yes, sir.

(Testimony of C. R. Monaghan.)

Q. And you allege in your complaint you entered into a contract of this kind, and now, have you read Paragraph (7) of this contract as to the terms of payment? A. I think I have, yes.

Q. Now, did you ever have an understanding with the association that you were to be paid in any other manner than according to Paragraph (7), and if so, what? A. I did not.

Q. Now, I will call your attention to Paragraph (8) of it: "The Association is hereby authorized to process or manufacture into changed or new products the products delivered hereunder * * * "

Now, do you understand that clause?

A. I believe I do.

Q. Well, would that include ice cream? Would that be a new product?

A. I presume that's one of the main products.

Q. And the Association is "authorized to process or manufacture into changed or new products the products delivered hereunder and pay the Producer as provided for in Paragraph 7, from the proceeds from resale of the changed or new products or at its discretion to pay a flat delivery price therefor * * * ." Now, did [50] you ever have any arrangement with the defendant or any of its officers to get a flat delivery price? A. I did not.

Q. Do you know of anybody else among the milk producers that ever did? Of milk?

A. I don't remember now of any of them.

Q. Now, are eggs sold to that creamery down there.

(Testimony of C. R. Monaghan.)

A. They are handled through the creamery, yes.

Q. Well, are they put into by-products?

A. Mostly put right on the market.

Q. None of them used in any of the processing goods down there? A. I doubt it.

Q. Is there powdered milk. A. Lots of it.

Q. Is there butter? A. Yes, sir.

Q. And now, can you tell the Court, where does the bulk of the milk you sell the defendant go? Is it sold as milk in town or is it sold to go to the manufacture of ice cream?

A. It principally all goes on the market, bottled.

Q. Some of your milk is co-mingled, is it, with the powdered milk and with the butter from the Outside to make ice cream with? What else do they make down there besides ice cream?

A. At present it is practically—has been at one time they made a little cottage cheese. I don't remember just when that was, but it is ice cream practically all the time.

Q. What proportion of the total sales go to the consumers here—of the milk—as compared with the proportion that goes into that creamery down there?

A. I wouldn't venture to say. I never [51] considered—you mean of raw milk?

Q. Yes.

A. Of raw milk—well, it is the biggest part of the raw milk on the public market.

Q. 90 per cent?

A. Well, I would say more than that.

Q. A small fraction goes to the creamery?

(Testimony of C. R. Monaghan.)

A. A small fraction.

Q. Were you present at a meeting between the Board of Directors and representatives of the dairy farmers that's been testified about where the matter of this profit of \$57,000 came up and was demanded?

A. I was.

Q. Can you tell what took place there?

A. Well, it was discussed, and the Board members said they felt morally we were entitled to it—they just didn't know where they was legally, and, of course, they claimed they didn't have the money.

Q. Who was their spokesman?

A. Well, I don't know. They all seemed to talk for themselves pretty much.

Q. You heard Mr. McAllister's testimony with reference to a meeting where the question of advances came up. Were you at that meeting where Mr. Stock spoke?

A. I believe you are referring to the time we were discussing the price of milk?

Q. Yes. A. I was there, yes.

Q. What was that discussion about?

A. Well, as I remember it—it has been some-time ago—as I remember it it was that the co-op was considering reducing the price of milk somewhat—

Q. By that do you mean reducing the ultimate price, or just the advance?

A. No, the advance. [52]

Q. When you say "price," then, you meant "advance?"

A. Yes.

(Testimony of C. R. Monaghan.)

Q. And that was what was reduced?

A. I don't say it was. At any rate, they was considering it—it come up at this meeting. I don't know whether it was called for that purpose, but it was being discussed there and the producers were objecting to it. Mr. Stock made the statement he didn't see that we had any objection; that our argument was we were making enough we didn't need to reduce it; and he said we would get it back anyway, so we had nothing to worry about.

Q. What do you mean by that? Can you explain to the Court what you mean by that? Explain what he said a little more in detail.

A. I don't know if I can use his words, but the impression I got was that he meant we would get it, just like we did for three years or so, after the audit. If the money had been made the dairymen would get the money anyway.

Q. In other words, was he trying to explain to you that it didn't make any particular difference to you that what advance you got——

Mr. Davis: Your Honor, I don't want to——

Mr. Grigsby: I will withdraw it.

Mr. Davis: This is a friendly suit and all the evidence should come out, but the witness should testify—not Mr. Grigsby.

Mr. Grigsby: Friendly, except we want \$57,000 and you don't want to give it to us. Mr. Monaghan, have you other slips of [53] this kind.

A. I believe that's all I have.

(Testimony of C. R. Monaghan.)

Mr. Grigsby: We offer these slips in evidence.
(Handed them to Mr. Davis.)

Mr. Davis: They are for the year '42, apparently?

Mr. Grigsby: Only some of them don't show it.

Mr. Davis: Well, I see no reason why they shouldn't go in.

The Court: They may be admitted as Plaintiff's Exhibit No. 5. Can they go in collectively?

Mr. Grigsby: They can go in collectively, and I wish to read them at this time, your Honor.

The Court: How many are there?

Mr. Grigsby: Four.

(Plaintiff's Exhibit No. 5 admitted in evidence.)

PLAINTIFF'S EXHIBIT NO. 5

Matanuska Valley Farmers Cooperating Association
Remittance Advice—No Receipt Required

Date of Invoice	Description	Gross Amt.	Discount or Deduction	Net Amt.
4/24/42	Final payment on milk pool 2627.39# butterfat @ .26804			\$ 704.25
*	* * * * *	*	*	*
	Second payment on milk pool 20% of dollar value \$7217.99 x 20%			
	Less: 2% reserve	\$1443.60	\$28.87	\$1414.73
*	* * * * *	*	*	*
	Final payment—milk and cream pool Total amount purchased	\$5903.09		
	22.579% of "Dollar Value" purchased	\$1332.86		
	Less 2% Statutory Reserve	26.66		
	Final payment			\$1306.20

(Testimony of C. R. Monaghan.)

* * * * *		* * *
Second milk pool advance :		
Total amount purchased	\$5903.09	
20% of "Dollar Value"		
purchased	\$1180.62	
Less 2% statutory reserve	23.61	
	<hr/>	
Amount of second advance		\$1157.01
* * * * *		* * *

[Endorsed]: Filed August 5, 1948.

Mr. Davis: I might suggest, Mr. Grigsby, since the Court is going to pass on these things, maybe it isn't necessary to read those. You can if you want to.

The Court: I have already read one of them and I can read the others in a minute to save your time.

Mr. Grigsby: All right, I wanted to look at those a minute. Then I will waive the reading of them. And, if the Court please, it is just half past four and it is quite important these men get away. Can we take a recess at this time?

The Court: Yes. The trial will be continued until tomorrow morning at 10 o'clock. Court now stands adjourned until tomorrow morning at 10 o'clock. [54]

(Hearing was resumed at approximately 10:00 o'clock a.m. of Friday, March 14, 1947.)

The Court: Mr. Monaghan may resume the witness stand. You may proceed with examination, Mr. Grigsby.

(Testimony of C. R. Monaghan.)

Mr. Grigsby: Yes, your Honor. Mr. Monaghan, during the year 1945, that is, the fiscal year referred to beginning December 1, 1944, and ending November 30, 1945, did you sell all your milk to the co-op?

A. I did.

Q. Referring to the defendant corporation? All the milk you produced you sold to them?

A. I did

Q. And you know as a matter of fact that that was re-sold? A. Yes.

Q. Mr. Monaghan, I will hand you Plaintiff's Exhibit 5 and call your attention to—one of these had a date on it—this part of the exhibit dated 4/24/43, being April 24, '43, "Final payment on milk pool, 2627.39# butterfat @ .26804." Was that for milk sold in '42? A. Yes.

Q. You remember that? A. Yes.

Q. Had you, previously during the year '42, received an advance on milk as you delivered it?

A. I did.

Q. That is at certain periods? A. Yes, sir.

Q. At that time were they paying on the twice-a-month system? A. Yes, sir.

Q. Now, here is an undated slip: "Final payment—Milk and Cream Pool, Total amount purchased—\$5903.09; 22.579% of 'Dollar [55] Value' purchased, Less: 2% Statutory Reserve; Final Payment, \$1306.20." Do you know what year that was for? A. I think that was '43.

Q. Well, do you know when you received it? In '43, or—was this for the operations of '43, you mean, or the operations of '42?

(Testimony of C. R. Monaghan.)

A. That would be for the operations of '43, yes, that is what I mean—would be received the early part of '44, I don't remember the exact date. That one that you hold in your hand is the second of two.

The Court: Let me see the first one.

Mr. Grigsby: The first one, your Honor, had nothing to do with this one.

The Court: Well, your witness says this was for '42.

Mr. Grigsby: Yes, your Honor, for the operations of '42.

The Court: I am going to mark '42 somewhere on this one, so I will know what it all means. All right now, the next one you are testifying to was that one for—

Mr. Grigsby: You say that is for operations of forty—

A. As I remember, it is '43, sir.

The Court: Let me see that.

Mr. Grigsby: Just a minute, your Honor; he said that was the second one. Which was the first one? Would that be the first one?

A. Yes, that's the first one.

Mr. Grigsby: Now, are those two payments of \$1306.20 and \$1157.01 both for the previous year's operations, and are they for [56] the same year, do you know?

A. They are for the same year. This is the first one because it's 20 percent.

Q. And the second is 22?

A. Yes. That's how I know—

Q. And were those payments made the year following the year when the products was delivered?

(Testimony of C. R. Monaghan.)

A. Yes, sir. They were made after the final audit.

Q. Now, on this, which was the first one?

A. This one.

Q. Now, I am referring to the slip which reads: "Second Milk Pool Advance, Total amount purchased \$5903.09, 20% of Dollar Value purchased, Less: 2% Statutory Reserve; Amount of Second Advance \$1157.01." Now, that's the first one you got. Now, following that, and afterwards, did you receive an additional payment?

A. Received that.

Q. And that's the final payment? A. Yes.

Mr. Grigsby: Now, your Honor, might not the witness testify those are for the year '43 operations?

The Court: I will mark '43 in the right hand corner.

Mr. Grigsby: Now, do you know what that one would be for? (Handing one to witness.)

A. That's—no, I will explain: I said that was '43. To be definite on that would mean checking with their books to correspond. Now, this one is either first—the first one I received in '44, I evidently have misplaced one—

Q. That would be for '44 operations?

A. For '44 operations. I received two following '43's fiscal year, and two for '44; but [57] this would be the first one of the year. Them two I know come together.

Q. Now, this says: "20% of dollar value \$7217.99

(Testimony of C. R. Monaghan.)

x 20%." Do you know, does that \$7217 refer to an amount you had already received?

A. Yes, sir.

Q. During the year?

A. During the fiscal year.

Q. Whatever year it was? A. Uh-huh.

The Court: It was not '45, though, was it?

The Witness: No.

Mr. Grigsby: That was either '44 or '43?

A. '44 or '43.

Q. Then, this slip was paid to you the following year of the operations? A. Yes, sir.

Q. The bimonthly payments that you would receive, would they amount to anywhere near those figures when you were paid twice a month as you deliver milk? Do they aggregate any such sum as \$1414 every two weeks?

The Court: What was the answer?

The Witness: I said no.

Mr. Grigsby: Well, what I am getting at is, could you possibly have received a bimonthly payment of as large an amount as that?

A. I didn't at that time, I don't think, get that much.

Q. Well, you work 12 months a year, don't you?

A. Yes.

Q. Now, during the fiscal year when you are selling milk, what's the most you ever get every two weeks as an advance?

A. At that time I should judge I probably—my peak would be, maybe, [58] \$600.00.

(Testimony of C. R. Monaghan.)

The Court: How much?

The Witness: \$600.00, probably around—

The Court: Maybe if you will step back, Mr. Grigsby, the witness will speak louder. I have difficulty in hearing him.

Mr. Grigsby: Excuse me, your Honor. And you know this is for either '43 or '44? A. Yes.

Q. You may hand it to the Court.

The Court: Do you know whether it is for '43 or '44?

The Witness: I wouldn't swear to which one it was until I checked against their books to correspond with it, but I do know that them two you marked '43 were received for the same year's operation.

The Court: All right.

Mr. Grigsby: I think that's all, at this time at least.

Cross-Examination

By Mr. Davis:

Q. Mr. Monaghan, you are the plaintiff in this action, aren't you? A. Yes, sir.

Q. And the various parties testified to by Mr. McAllister yesterday have assigned their claims to you for the purpose of this suit? A. Yes, sir.

Q. And was Mr. McAllister correct when he said this assignment had been made for the purpose of collections? A. Yes, sir.

Q. As a matter of fact, each of the dairymen

(Testimony of C. R. Monaghan.)

still have their [59] proportionate interest in this suit? A. Yes, sir.

Q. And the assignment was made for a matter of convenience to have one party bring the suit instead of 22? A. Yes, sir.

Q. Now, I don't believe you testified directly yesterday as to whether Mr. Thuma did or did not sign the assignment?

A. How was that question?

Q. Did Mr. Thuma sign the assignment—Tuma or Thuma? A. Thuma.

Q. Thuma—did he sign the assignment?

A. He did not.

Q. But according to your testimony he did say that he wanted to come in on this suit?

A. Yes, sir.

Q. Have you been able to find that assignment yet?

A. I left that assignment with Mr. Grigsby.

Q. And, of course, you don't know where it is since that time? A. No, sir.

Q. Mr. Monaghan, how much, if you know, how much money did you get for your milk operations in 1945—in fiscal '45?

A. I couldn't say offhand.

Q. Would the figure \$7716.83 — \$7716.83 — be right? A. I don't believe so.

Q. Do you have any way of determining how much money you did get for that year?

A. Yes, I have the figures at home, but I didn't bring them with me.

(Testimony of C. R. Monaghan.)

Q. You don't have them here? A. No.

Q. Now, the figure I have just quoted is the figure that the [60] co-op books show you received in money for '45. A. Yes, sir.

Q. Now, there also were some slight deductions: \$2.05 for merchandise deduction and \$157.08 for the two percent. All those figures added together should be the figures the judge has on the sheet that he has which would amount to around 78 or 79 hundred dollars——

The Court: \$7852.34 is the figure listed here.

The Witness: That should be correct, then; I just didn't remember exactly.

Mr. Davis: All right. You don't have any independent memory as to what money you did get that year? A. No.

Q. You are willing to take the books of the co-op then? A. Absolutely.

Mr. Davis: And I think it has been testified that the sheet you have, your Honor, was made from the co-op books.

The Court: Yes.

Mr. Davis: Now, Mr. Monaghan, you started delivering milk, I think you said, about 1942?

A. In the spring—in April, I believe it was—1942, as I remember now.

Q. Do you know anything at all about what was done in connection with milk prior to 1942?

A. No, I was running a bottle route of my own at that time.

(Testimony of C. R. Monaghan.)

Q. Now, you also are a produce producer, aren't you?

A. Very little—a few potatoes occasionally, but very little; nothing else.

Q. Well, you have had some potatoes every year, haven't you? [61]

A. I sold 1300 pounds in '46, I believe it was.

Q. I'm sorry, I didn't get that?

A. I sold a few in 1946. I don't remember as I sold any in '45. I wouldn't be positive of that.

Q. You don't remember of that?

A. Very few, anyway.

Q. Now, I think in answer to a question put by Mr. Grigsby you testified that you have been paid, as Mr. McAllister says he has been paid, twice a month?

A. Yes, sir.

Q. On the basis of a definite fixed amount per hundred pounds?

A. Was—our advance was fixed.

Q. All right, I am not going to argue whether it was an advance or payment. Anyway, you have received money every two weeks based on particular price for a hundred pounds of milk?

A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. According to the grade and according to test?

A. Yes.

Mr. Grigsby: If your Honor please, I would like to caution the witness he doesn't have to say "yes" to every leading question. It is designed to deceive

(Testimony of C. R. Monaghan.)

the Court and have the record portray what isn't the fact.

The Court: Well, I think the witness——

Mr. Grigsby: I don't see the necessity for any trick question.

The Court: Well, I think the witness can take care of himself.

Mr. Davis: Now, your Honor, I don't think I am trying to trick anybody. Mr. Grigsby puts words in their mouth to say it [62] was an advance. I don't. I want to know what was done.

Mr. Grigsby: Now, the slips furnished by the co-op have the word "advance." I didn't create the word. It is there.

The Court: Well, counsel can argue it some other time.

Mr. Davis: Yes, I will be happy to.

The Court: You may proceed, Mr. Davis.

Mr. Davis: But you have been paid, or advanced as the case may be—you have received money every two weeks on this schedule? A. Yes, sir.

Q. And did you likewise receive a winter bonus during the winters of so much a hundred pounds?

A. Yes.

Q. Fact of the matter is, that has been general—the same system is set up for all the milk producers, isn't it? A. Yes.

Q. Now, I asked Mr. McAllister yesterday as to the mechanics of getting this so-called advance and he testified the thing was automatic: every two weeks you got your check for the milk that had been de-

(Testimony of C. R. Monaghan.)

livered the previous two weeks; you got it by picking it up at the creamery. Is the same thing true as to your milk? A. Yes, sir.

Q. Now, Mr. Monaghan, will you tell the Court how you arrive at the figure that you are entitled to, \$3285.04, in this?

A. Through precedent as much as anything else. Something has been handled that way all the way along and were given to understand we were to receive that.

Q. I understand; you testified to that yesterday. But I [63] want to know how you arrived at that figure. What figures did you use and how did you get to that point?

A. We took their annual report.

Q. Well now, you are the plaintiff in this case, aren't you? A. Yes, sir.

Q. All of these figures have been prepared under your direction? I am talking now about the figures for the different claims, Mr. Monaghan. Of course, I know the basic figures come from the co-op, but I want to know and I want you to tell the Court how the various amounts that the men claim have been arrived at.

Mr. Grigsby: If you know——

The Witness: I didn't know what my actual share would be.

Mr. Davis: Well, do you know how these figures were prepared?

A. I don't know that I understand just what you mean.

(Testimony of C. R. Monaghan.)

Q. Do you know, Mr. Monaghan, what figures were used and how you arrived at the end figure, \$3285.04, as being the amount you claim to be due to you?

A. I figured, prorated on the amount of milk I sold, on an equal share.

Q. Yes, now, prorated against what? Mr. Monaghan, these slips you have shown the Court show that you were paid a certain percentage, I believe you testified, of the money you had already received that year. Now, is that the way you arrived at these figures, for the year 1945?

A. It would be on that basis, yes. Whatever is the share of the profit from the creamery prorated would be my share.

Q. All right, I think maybe you are getting somewhere now. On the profit of the creamery prorated according to some share?

Mr. Grigsby: Mr. Davis, I might save you time to say I made the computations and he don't know anything of how I made it.

Mr. Davis: I suspected that was the case.

Mr. Grigsby: Why don't you be frank with the witness?

Mr. Davis: All he has to do is tell me he don't know.

Mr. Grigsby: Well, he can't answer your question how he arrived at these definite——

The Court: Counsel should not argue now.

Mr. Grigsby: I object to this snide cross-examination.

(Testimony of C. R. Monaghan.)

The Court: Objection is overruled.

Mr. Grigsby: There isn't a jury here.

The Court: Objection is overruled.

Mr. Grigsby: No use pettifogging a case through before the Court.

Mr. Davis: Mr. Monaghan, do you or don't you know how you arrived at the figure \$3285.04 as being the money due to you? A. No, sir.

Q. And do you know how the figures for the other plaintiffs who have assigned their claims to you were arrived at? A. No, sir.

Q. All right. I think you testified yesterday that the bulk of the milk which was delivered by the farmers is sold to—is sold as bottled milk. Will you tell me how you arrived at that [65] conclusion?

A. From the co-op's report.

Q. About when did they make such a report, Mr. Monaghan?

A. We get them often. It was verbal reports.

Q. You actually don't know of your own knowledge as to how much of the milk is sold in bulk and how much as manufactured product, do you?

A. Not exact amount, no.

Q. Well, I mean a proportion: Do you know of your own knowledge that a large proportion—almost all of the milk—goes into bulk milk, as you testified yesterday? Do you know that of your own knowledge? A. Into bulk milk?

Q. Yes, into—

Mr. Grigsby: You mean, sold in town in bottles, don't you?

(Testimony of C. R. Monaghan.)

Q. (By Mr. Davis): In town and to the Army, yes.

A. Yes, I know a large part is sold in bottles.

Q. How do you know that?

Mr. Grigsby: Common sense.

The Witness: I just know it.

Q. (By Mr. Davis): I'm sorry, I didn't hear?

A. I just know it, I say.

Q. Have you had anything to do with delivering this milk after you deliver it to the co-op?

A. No, sir.

Q. Then you don't know of your own knowledge, Mr. Monaghan, as to how much of this milk goes to any particular place, do you? A. Yes, sir.

Q. Well, how do you know it?

A. From reports. [66]

Mr. Grigsby: A little louder, please.

The Witness: From reports from the co-op.

Q. (By Mr. Davis:) All right, I asked that a while ago. Where and when were those reports—such reports—made, and what was the nature of the reports?

A. Made them in our meetings, of course—our annual meetings.

Q. Now, you have annual meetings of the co-op, don't you? A. Yes, sir.

Q. And at those meetings the co-op affairs are pretty well explained to anybody interested, isn't that correct? A. Yes, sir.

Q. And these various financial statements we

(Testimony of C. R. Monaghan.)

have been talking about here are produced and gone over at those meetings? A. Yes, sir.

Q. And you have attended those annual meetings? A. Yes, sir.

Q. Any special meeting they have had, you have attended most of those, I suppose?

A. I didn't catch that last question.

Q. The special meetings of the stockholders, you have attended those from time to time?

A. Yes, sir.

Q. And you also have met with the Board of Directors from time to time about this milk problem, haven't you?

A. I don't know as I ever met in a regular board meeting in regards to it.

Q. You haven't ever been a member of the Board of Directors, have you, of the co-op?

A. Yes, sir, for a short time this winter.

Q. How long a time?

A. I believe I was sworn in on the seventh of December and I served until the annual election.

Q. That would be the seventh of December, 1946?

A. Yes, sir.

Q. And you served until the annual election, which was in January, '47?

A. No, it was in the latter part of February, I believe it was.

Q. All right, I don't want to put the date in your mouth. All right, then, you served about two months on the Board? A. Approximately.

(Testimony of C. R. Monaghan.)

Q. Now, did you hear me read to Mr. McAllister yesterday certain minutes of the Board of Directors meeting in which you had some discussion? Did you hear that? A. I don't remember that, no.

Q. Do you remember attending a meeting of the Board of Directors at which a discussion was had of the milk dealers' problems and you did some discussing at that meeting? I believe that was in 1943.

A. I don't remember, no. I don't remember what you are referring to.

Q. Don't remember whether you were there or not? Now, do you have any knowledge, Mr. Monaghan, as to the percentage of profit—so-called profit—surplus, maybe we would call it—of the dairy department that arises from the sale of bulk milk and the percentage that arises from manufactured products?

Mr. Grigsby: Objected to as immaterial.

The Court: Overruled. You may answer, if you know.

The Witness: Ask that question again, please.

Q. (By Mr. Davis): I asked you, Mr. Monaghan, if you know of your [68] own knowledge, anything about the percentage of profits that arise from the operation of the part of the plant they call the dairy and from the part of the plant that they call the creamery, in other words, the manufactured products and the bulk milk products?

A. Why, I know what they are supposed to receive for the bottle of milk. I don't know what they pay for it. I couldn't—

(Testimony of C. R. Monaghan.)

A. I said, I know what they receive for the bottled milk.

Q. Who? What who receives?

A. The co-op receives for the bottled milk.

Q. And how much is that? A. 35c a quart.

Q. And that has been raised from 30c within the last three or four months, something like that?

A. Since the first of September, I believe it was.

Q. Yes, five months?

A. It was 30c previous to that.

Q. That is how much?

A. It was 30c previous to that.

Q. Do you know how much is received from the milk they sell the Army?

A. No, I couldn't quote prices on that.

Q. Now, Mr. Monaghan, these so-called profits include the proceeds from both the manufactured products and the bulk milk sale, don't they? Now, if you don't know, say so; if you do know, I want your answer. A. No, I don't—

Q. They do not? Your answer is that the so-called profits do not include the proceeds of both the creamery and the dairy? [69]

A. I don't understand that—the way that is handled—exactly.

Q. Well, I will try to be more explicit. Yesterday these was a figure thrown around here of \$57,000 as the so-called profits of the dairy department. Now, what I want to know is if you know as to whether or not that figure includes profits from the bulk sales of milk—the sales in bottles—and the

(Testimony of C. R. Monaghan.)

profits of the creamery department—the popcicles, the cottage cheese, the ice cream, the other manufactured products—as well?

A. Well, my understanding on that is that there is a certain percent in there. The way they have explained to us—the co-op explained to us—they failed to keep their books; they can't tell us what percent.

Q. All right, and then to answer my question: Do you have any knowledge what percent?

A. No, sir.

Q. And you don't have any knowledge because they failed to keep their books so they can't tell you so you can't tell me? A. Yes, sir.

Q. Now, I think you were present at an informal meeting of four of the Board of Directors about a year ago—maybe a little over—maybe not quite a year ago—in which a discussion was had about the 1945 milk. Do you remember being there at that time? A. I was.

Q. Will you tell the Court what the discussion was at that time?

A. Well, it was—tried to figure out some settlement with the co-op Board that were present, but they didn't know legally [70] what they could do, and it was suggested that they bring it before the Court, as has been done.

Q. Who were present there beside the four members of the Board of Directors?

A. I couldn't give you a list. I don't know.

(Testimony of C. R. Monaghan.)

'There was quite a number there, but I couldn't name you——

Q. Could you tell me some of them?

A. Well—oh, Mr. McAllister and myself, and I don't know, quite a number.

Q. What—I am sorry?

A. I say, there was quite a number other dairymen there, but I don't remember.

Q. Would that be the committee from that dairymen's group that Mr. McAllister was talking about yesterday?

A. We didn't really have a dairymen's association. In fact, that's what started a dairymen's association at that time. We just called a group of dairymen together to meet with the Board.

Q. Was anything said at that time about all the milk dealers demanding \$57,000 from the co-op?

A. I don't know whether you would call it demanding. We argued we should have it, that we was entitled to it.

Q. Was the figure \$57,000 mentioned?

A. Yes, sir.

The Court: Pardon me, counsellor. I don't remember any testimony about \$57,000. There was testimony about 53,000 and some hundreds of dollars.

Mr. Davis: I think, your Honor, the figure is \$57,001 and some odd cents.

The Court: Oh, that is including the income from rents. [71]

(Testimony of C. R. Monaghan.)

Mr. Davis: Yes, and if I understood Mr. Monaghan's testimony yesterday on direct examination he said he was present at the time a demand was made for the \$57,000. Now, I may be mistaken, but that is——

The Court: Yes, \$57,001.58. I had overlooked that. You may proceed. Maybe you had better ask the question again or have it read.

Q. (By Mr. Davis): Now, Mr. Monaghan, I want to know if you demanded—if demand was made of the co-op Board, that you be paid—by you I mean all the dairymen—be paid \$57,000?

A. You might call it demand.

Q. Well, the fact of the matter is, it was more or less a friendly discussion, wasn't it, to find out what could be done? A. Yes, sir.

Q. And you sat down with the Board and you said: "We feel we have got some money coming. This shows a profit for the dairymen." And then the members of the Board said what you have previously testified here, that "we don't know whether we can legally do it or not, and we don't know whether we can pay it or not if we could legally do it, but we would like to see you get some money," something on that order. Wasn't that about what happened in that?

A. They didn't say "some money." They said we was morally entitled to it, but they didn't know whether legally they could pay it or not.

Q. And at that time, it was suggested the mat-

(Testimony of C. R. Monaghan)

ter might be [72] brought before the Court and settled? A. Yes, sir.

Q. And following that this suit was filed?

A. Yes, sir.

Q. Now, I am not clear on the matter of these slips. Mr. McAllister testified these slips, similar to the ones you have presented here, came at the time that the extra money was paid after the end of the year. Is that also your testimony?—These slips that have been presented here as Exhibit 5?

A. These slips were issued after the audit, and when they got their preliminary figures from the auditor the first time that they paid the 20%—see, that would be the spring of '44—they says we haven't the final audit, but we do know that we can safely make a part payment on it. If the farmers needed money to operate in the spring, they said, we can pay 20% safely, we know, now and they did so. Then after the—they got the books back from the auditor—he had gone back to Juneau and took the books back there—when they got their final figures and everything was all paid off—everything—all the deductions and everything—we got the balance from the second payment.

Q. And those figures are based on a percentage of the milk—a percentage of the payment amount you had previously been paid for milk that year?

A. Yes, sir.

Q. Mr. Monaghan, just for the information of the Court, these audits have always been made by

(Testimony of C. R. Monaghan)

an outside firm, haven't they. They are not made by the co-op accountants?

A. Yes, an outside firm. [73]

Q. The particular years under consideration, I believe, they were made by a man from Fairbanks—a firm from Fairbanks?

A. Mr. Neill, I believe—Neill and Clark.

Mr. Davis: Excuse me a minute, your Honor, please? That's all, Mr. Monaghan.

Mr. Grigsby: That's all, Mr. Monaghan.

The Court: That is all, Mr. Monaghan. Another witness may be called.

Mr. Grigsby: Mr. Allyn, will you take the stand, please?

MARVIN ALLYN

being first duly sworn, testified for and in behalf of the plaintiff as follows:

Direct Examination

By Mr. Grigsby:

Q. Mr. Allyn, I will hand you a document—well, first, what is your position with reference to the Matanuska Valley Farmers Cooperating Association?

The Court: Let us get his name first.

Mr. Grigsby: What is your name?

A. Marvin Allyn.

Q. Have you a position in the defendant corporation? A. It is——

(Testimony of Marvin Allyn.)

Q. What?

A. Chief Accountant and, more recently, assistant general manager.

Q. And how long have you been an accountant for the defendant?

A. Since the 15th of January of this year. [74]

Q. Now, can you tell the Court what this document is?

A. That is a copy of the annual audit for the fiscal year 1945 and prepared by Neill, Clark and Company, Public Accountants.

Q. And who made this copy?

A. The accounting firm in their offices.

Q. That was made when?

A. It will be dated on the cover sheet: It is dated February 11, 1946.

Q. Is that part of the records of the defendant corporation? A. It is.

Q. Have you examined this—you had nothing to do with the preparation of this?

A. None whatever.

Q. Have you examined it so that you understand the data given here in this compilation?

A. I understand the result as presented there and the certificate of the auditor.

Q. Well, do you understand how the results were arrived at—the computations?

A. Not fully. In other words, the records were prepared and examined—audited—to the satisfaction of the public accountant who expresses in his

(Testimony of Marvin Allyn.)

certificate his satisfaction that they are accurate and correct.

Q. I wasn't asking you about their being true and correct. I don't doubt that. But I ask you if you have made examination of this audit so that you understand the system on which it was made? And can explain them? A. I believe so.

Q. And have you examined—have you ever examined that contract that is in evidence?

A. Not minutely. [75]

Q. Well, you have discussed this case, haven't you—this controversy—with the Board of Directors and with Mr. Davis? A. Yes.

Q. And you understand what this law suit is about? A. Yes.

Q. Have you read this paragraph (7) of the contract which is in evidence, Mr. Allyn, which provides for the terms of payment for products—agricultural products—sold to the co-op, and which states that, with reference to the terms of payments, certain deductions will be made as follows:

“(a) repayment of advances made to Producer under Paragraph 4 of this Contract and interest on said advances; (b) reasonable charges for the services of receiving, handling and selling said agricultural products under Paragraph 5 of this Contract;”

Now, can you, in this audit, point out where that charge is made—reasonable charges for the receiv-

(Testimony of Marvin Allyn.)

ing, handling and selling? Are you familiar with this enough so you can find those charges?

A. These charges—the operation of the cooperative organization—you must maintain your office, your entire organization, your depreciation, your financial reserves—it requires the entire unit—and the expenses of the Association, and they are taken in your profit and loss statement for the Association. Your indirect—your operating expenses cover all products.

Q. Yes, Mr. Allyn; my question wasn't that. My question was whether you can turn to the page there where the charge for [76] handling, receiving, re-selling the products is set forth—that separate charge?

A. No. They are handled as a cooperative organization.

Q. Well but, there is a place in the book there where the expense of handling is set forth, isn't there?

A. No. You have your—for instance, a delivery expense; you have got depreciation; you have got gas and oil; you have got maintenance and all your other expenses are a part of the cost of handling.

Q. Is that set forth anywhere in this book?

A. Oh yes.

Q. Well, that's what I want.

A. (Leafing through book) Schedules 8 and 9, your Honor—it is shown on Schedule 8 and Schedule 9. It must be taken as a combination of both.

Q. Well, Schedule 8: Now, on Schedule 8 in the column headed "Dairy and Creamery" there is

(Testimony of Marvin Allyn.)

a total of \$83,807.54. What does that figure represent?

A. That represents the proportion of the expenses of the total Association as it was estimated to be the percentage applicable to the dairy unit as such.

Q. Now, Mr. Allyn, do you mean to tell the Court that that figure \$83,000 is arrived at by taking a percentage of something?

A. Those are that portion of the expenses which they felt justified in attributing directly to the department.

Q. To the dairy unit?

A. To the dairy unit.

Q. For instance, they charged the dairy unit with \$552.90 for advertising.

A. Yes.

Q. Well, wasn't that a direct expense? Not that they felt [77] justified, but wasn't that actually incurred as an expense of advertising for the dairy and creamery unit? It wasn't a proportion of anything, was it?

A. I think so. My understanding is that they pay, for instance, for radio broadcasting, they paid—the monthly statement for the broadcasting company, for the newspaper advertising——

Q. For the advertising of what?

A. Of the products of the Association of which they felt that the—perhaps the dairy products received the benefits of two-thirds of the advertising, or whatever the proportion might be.

Q. What do you mean, now, by that? Explain that a little.

(Testimony of Marvin Allyn.)

Q. All right. Now, there is an item here of "Supplies," \$25,752.07, which goes to make up that total of \$83,807. Do you know anything about that item—what that consisted of? What supplies?

A. In those years, no.

Q. Well, in this year—'45? This is for one year, this item here.

A. That would include sterilization equipment; it would include the small tools that might have been used.

Q. But we have an item of small tools of \$184.

A. All right. In that year they made a separation. In the '46 audit you will find that the small tools would be a part of your supplies.

Q. Well, what else did that \$25,000 include?

A. It would include, perhaps, cans, metal sponges; it would include all miscellaneous supplies necessary to operate the dairy and which did not become necessarily a part of the finished product.

Q. Well, would it include the purchase of powdered milk? [78]

A. That would have to be determined from an examination of those particular accounts.

Q. Is that accessible?

A. Here, no. That is part of the records up—

Q. Part of the records? Could you tell from your record what that \$25,752 is?

A. With a great amount of work, yes.

Q. Now, there is an item here of "Salaries and Wages," \$32,869. That's the salaries and wages incurred in running that particular unit?

(Testimony of Marvin Allyn.)

A. I would say so, yes.

Q. And "Lights, Power and Heat," \$3627.39, that's incurred in operating that particular unit?

A. My understanding is that that would be merely the heat, power and light for the Anchorage Dairy and that the heat, power and light for the creamery in Palmer would be under this next schedule of indirect prorated on the base of sales.

Q. You don't think this item includes any of the power down there at Palmer?

A. I don't believe so. There again, this is an opinion. I wasn't in on the preparation of these records.

The Court: Court will stand in recess until 11:15.

(Whereupon recess was had at 11:05 o'clock a.m.)

After Recess

Mr. Grigsby: What was the last question?

(Reporter read last question and answer.)

Q. Mr. Allyn, have you accessible here in the court room, the figures showing the amount of money paid all the dairymen [79] for milk for the year 1945? A. Yes.

Q. Could you get it, please?

(Witness left stand.)

The Court: Isn't that figure shown in the audit?

The Witness: \$136,143.47.

Mr. Grigsby: That corresponds with the figure I have. A. It does.

(Testimony of Marvin Allyn.)

Court: Will you read that again?

Mr. Grigsby: \$136,143.47.

The Court: That is the total derived from the sale of milk?

Mr. Grigsby: No, your Honor, that is the actual cash paid the dairymen for their product of 1945.

Did you prepare that sheet, referring to Plaintiff's Exhibit 3?

A. Yes. This is one of several schedules which I prepared for the plaintiff.

Q. You took that off—that's all in the book right there?

A. It's all in the book. Those were made as information returns and any differences that may develop, the books will control.

Q. Do you know what page of the book that's from?

A. It may come from several. I would have to examine them both.

Q. Well, on Page 9?

A. If you will bring them here I can help you on that. The statements were not to my knowledge prepared as evidence. They were prepared as information.

Q. Yes, I understand that. I asked you—you can look at it right here—that is taken from Pages 17—that's that figure?

A. Yes, it is a condensation. [80]

Q. 17, 18—— A. It is.

Q. And 19? A. It is.

(Testimony of Marvin Allyn.)

The Court: Are you talking about the audit now—Plaintiff's Exhibit 4?

Mr. Grigsby: Yes, if your Honor will refer to Page 17, 18 and 19.

Court: Yes, I have looked at them, but I will admit that I do not know every figure on them.

Mr. Grigsby: Page 17. Now, on Page 17 you have an item "Cost of Goods Sold," Dairy and Creamery, \$178,422.88. That listed on this statement, and it's Page 17, your Honor.

The Court: I have it.

Q. (By Mr. Grigsby): Now, that is the cost of all dairy products sold, isn't it, regardless of whether they were bought from the dairy farmers or purchased elsewhere?

A. Yes, that should be the cost at the point of sale.

Q. Now, \$178,422.88—of that, you have testified, \$136,143.47—that doesn't appear in the books—was paid to the dairy farmers for their milk?

A. That would be right.

Q. Now, to whom was the rest paid? That leaves a balance of something over \$542,000. I will call your attention to the figures of "paid to the dairymen"—178,000 is the cost of the goods sold.

A. That should include all such supplies as become a part of the finished products.

Q. Would that include, probably, milk, then?

A. That should [81] include powdered milk.

Q. Well, can it include anything that didn't go

(Testimony of Marvin Allyn.)

into the finished product? Would it include the expense of finishing the product?

A. I am not prepared to answer that. That would be a bookkeeping procedure for that particular period.

Q. Well, do you know whether the book shows what that other \$42,000 was paid for?

A. Oh, of course.

Q. They are not here, though? A. No.

Q. Well, could you get it—that information?

A. It could be developed, certainly.

Q. Sir? A. Certainly, it could.

Q. Excuse me a minute, your Honor. I have deducted \$136,143.47 from the total cost of goods—dairy products—sold, which would be the purchase price of them, or the purchase amount paid. That leaves \$42,279.41. Now, could you ascertain from an examination of the books when you go back tonight what that \$42,279 includes?

A. That information should be in the records of the cooperative.

Q. And it is accessible, is it?

A. Not readily, but it is there.

Q. Well, would you be able to bring it here tomorrow? A. Oh, certainly.

Q. I will just hand you that as a notation of it. Now, do you know whether or not—

A. Did you understand I said this will not be available by tomorrow? [82]

Q. It won't?

(Testimony of Marvin Allyn.)

A. It would be a complete re-check of the whole accounting procedure for a year.

Q. Well, do you know offhand—

A. It will take a re-audit of those expenses.

Q. Well, on Page 21 where I called your attention to the figures \$83,807, which represents the operating expenses of the dairy unit for the year '45, would that \$42,000, to your knowledge, include any of the items that go to make up that \$83,000 — for instance, "Supplies," \$25,000?

A. Yes.

Q. Would that?

A. Be included in the cost of goods sold?

Q. Would that include any of that?

A. No, the 42—

Q. The 42,000 — the balance. The 136,000 was clearly paid for milk. 42,000 was paid for something else. Now, you said it would include anything that went into the finished product — perhaps the expense of putting it into the finished product.

A. Well, if you are driving at—

Q. I am not driving at anything. I just want to know if it includes anything that is included in that operating expense?

A. In the cost of goods sold? It should not.

Q. How about it including the cost of the goods sold at the dairy which consisted of powdered milk mixed with the finished product? Would it include that? I am trying to get at the question whether any part of the operating expense of the unit—the dairy unit — is comprised by that \$42,000?

(Testimony of Marvin Allyn.)

A. I can only answer that by saying that it — this statement and the separation — the allocation of all these expenses — were done in such a manner as to be approved by the public accountant who prepared these figures—

Q. Now, I didn't question that fact. Now, you needn't mind that at all. I am trying to get at this: Supplies, \$25,752 — could you get that information with about the same amount of difficulty as you could get the information what the 42,000 went for? It would be about as hard a job, wouldn't it?

A. It would be.

Q. And supplies purchased under the head of operating expenses of the dairy and creamery for 1945?

A. Did you ask me a question on that?

Q. No, I didn't. If you do account for where that \$42,000 went, that will answer my other question and I will ask you to produce it as soon as possible, and tomorrow morning if possible.

A. Well, that would be out of the question. It would be a re-examination of the accounts—it would be detailed audit for the whole year. It took this man, I estimate, two months to prepare these statements and examine these records and you are asking that I make even a further breakdown than this man did.

Q. Of one item.

A. Well, I have got to find out—everything has got to tie together. You can't pick out any one. Any figure on any of these statements is tied to

(Testimony of Marvin Allyn.)

and derived from or in conjunction with every other figure.

The Court: May I ask a question there? In your general books [84] would there be a separate account under the head of supplies which would give you the information desired here as to the items of the \$24,752 very quickly? Have you got any such heading in any of your books marked "Supplies?"

The Witness: During those years I would have to go back and see.

The Court: You may find it on one or two pages?

The Witness: But that still wouldn't answer his question. We would have to go back to the original invoices and vouchers.

The Court: I do not know whether counsel would want to go back and examine the original invoices and vouchers. Perhaps the book or page would show the various items of supplies included in this.

The Witness: It won't by name. It would be by amount and reference to the vouchers.

Mr. Grigsby: Would it show the article?

A. No, you would go back to the original voucher and invoice which are, of course, in the warehouse in the archives.

Q. Well now, Mr. Allyn, this statement: Have you got that exhibit there?

The Court: I have this one — I have the copy of the audit.

Mr. Grigsby: No, the one I just had in my hand.

(Testimony of Marvin Allyn.)

Now, here is the item of \$178,422.88, which consists of \$136,000 paid to the milk farmers and the figures I gave you of \$42,000 paid somewhere else. Now, I will state that in 20 minutes the bookkeeper down there was able to give me the figure on what was paid [85] to the milk farmers. Now, why couldn't the figure paid for powdered milk for the year 1945 be given just as quickly?

A. Because that amount is — record is kept for each individual farmer. The individual farmer isn't interested in how many pounds of, or ounces of powdered milk were used in a certain day or a certain month, but he is interested in knowing how much milk he delivers and what he got for it.

Q. But you kept a record of what you paid the farmer for raw milk? A. Right.

Q. And you kept a record of what you paid somebody else for powdered milk for the year '45? That's down there? A. On an invoice.

Q. Well now, is it going to take days and days to find out how much powdered milk you bought in 1945?

A. If you want to know just powdered milk, no.

Q. Well then, I want you to get that.

A. All right.

Q. Now, what other—

Mr. Davis: You Honor, might I ask a question here to see if we could clear this up a little?

The Court: Go ahead.

Mr. Davis: I am wondering, Mr. Grigsby, if you are interested in finding out how much powdered

(Testimony of Marvin Allyn.)

milk was bought in that year, or are you interested in what items went in the \$43,000?

Mr. Grigsby: I am interested, I will state to Mr. Davis, in finding out whether the operation expense of the dairy unit [86] included the purchase of any supplies. Now, it included \$42,000 that went for something.

Mr. Davis: All right, I think he answered that when he began here. He said that the \$42,000 included supplies which went into the manufactured product.

Mr. Grigsby: That is his opinion. All right, I want to know how much?

A. It would also include packaging—

The Court: Also include what?

The Witness: Packaging material — your ice cream cartons, your milk bottle caps, your egg cartons, the seals on an egg carton; it would include your sugar; it would include your flavorings; it would include all the other ingredients of your ice cream,—

Mr. Grigsby: Is that the—

A. Of your mix.

Q. What other finished product do you make down there besides ice cream?

A. Ice cream, ice cream mix — during those years they made chocolate milk.

Q. We are talking about one year—'45.

A. During that year—I have a list of and the amounts, the sale values here of the different prod-

(Testimony of Marvin Allyn.)

ucts that were manufactured and sold by that department during that year.

Q. I am very glad to hear that. Now, you have stated certain ingredients that would include. Now, can you state whether that item, \$25,752, charged to supplies, includes those items?

A. It should not. [87]

Q. But you don't know positively whether it did or not?

A. I didn't keep the records, no.

Q. When I asked you what it did include you mentioned tools, but tools is segregated as \$184.

A. Yes. Well, I thought perhaps it might be. I see they have broken it down into supplies.

Q. Now, can you state what that \$25,000 does include?

A. It would include supplies used in the operation — mechanical operation, of the department.

Q. Well now, for instance, what supply? Fuel?

A. That should be in your fuel cost, I believe.

Q. Then what supply? It isn't the fuel cost?

A. All your cleaning materials, that would be a big item—your sterilization. I would include any testing and standardizing supplies, other chemicals that might be used for the same purposes.

Q. Would those total \$25,000 for one year?

A. Obviously they did.

Q. Well, if they include it, but you don't know what they would cost. Now, they don't include gas, oil and grease?

A. No.

(Testimony of Marvin Allyn.)

Q. And no doubt that gas, oil and grease was purchased? A. That's right. That——

Q. Do you know anybody here that you have talked with that does know what that includes?

A. I don't quite understand this. We have got—the accounting—these were set up and accepted to the best of the accounting——

Q. I know, and I want to find out what they include. I want [88] to know what this item of \$25,000 is, and I want to know where that \$42,000 went to, and—

A. It should have gone to all of these other expenses: For sugar, for milk powder, for salt, for powdered eggs, for ice cream, or what — all of the other ingredients of the ice cream, for the materials for packaging the equipment, those products.

Q. But you don't think those come under the head of "Supplies" in this statement?

A. No, they do not.

Q. Do you know positively they do not?

A. I do not positively know; I didn't keep the record.

Q. Well, it can be ascertained, can't it, ultimately?

A. Ultimately, by a re-audit of the accounting work of that year.

Q. A re-audit of that particular part of the accounting? A. All right.

Q. Now, I want to know, Mr. Allyn, what this \$25,752.07 included and I want to know where the \$42,000 figure you have, where that money went,

(Testimony of Marvin Allyn.)

as soon as you can get it. Now, Mr. Allyn, this \$83,807.54, is set down here under the head of operating expenses. That means the operating expenses of the dairy unit for '45. Now, that includes the handling and re-sale of milk, necessarily, doesn't it?

A. Oh yes.

Q. It includes all the items which are set forth as deduction (b), receiving, handling, selling milk sold to the defendant by the dairymen — it includes that?

A. Re-state that, please.

Q. The item, \$83,807.54 includes the expense of receiving, [89] handling and selling the milk produced by the dairymen, sold to the co-op, in 1945?

A. And all other products handled by that department.

Q. Yes, the handling of all other——

A. And the — yes — and also the operating expenses included in the manufacture of those other products.

Q. Yes, all the expense of disposing of the product of the dairymen and of the other product that went into any processed article. It includes all that expense, doesn't it?

A. Now, when we say "all that expense" we are leaving out the general expenses of operating the entire Association.

Q. Of course, I am leaving all that out, of course.

A. Then you are getting me to say all of the

(Testimony of Marvin Allyn.)

expenses of these particular products — I don't want to be misunderstood.

Q. Well, all right, it includes all the expenses connected with the handling, receiving and sale of the milk delivered by the dairymen—it includes that, doesn't it?

A. That was allocated by the bookkeeper at that time as being chargeable direct to — in other words, of this amount there was absolutely no question, that went directly there.

Q. Yes, and it includes all other expenses connected with the dairy, and operations of every kind, and that's all it does include—all expense incurred after the purchase of the article? In other words, the milk you delivered down there: Now, all other expense included in handling that milk is included in this \$83,000, [90] isn't it?

A. Let me explain that: In the operation of the Association, the Association did not have a cost accounting system. Everything was on a dollar and cent basis during all the past years. In an attempt to find out—they're operating a number of departments, including the produce department. Within the produce department they handle celery, lettuce, cabbage, potatoes—well, now, obviously the detail would be tremendous to take and figure out how much it cost them to handle celery, how much to handle lettuce, how much for rutabagas, how much for turnips, so for convenience they were grouped into departments. These separations were an attempt, without strict detailed cost accounting

(Testimony of Marvin Allyn.)

system, for the purpose of management, to determine where the Association earnings or net deficits came from in the attempt to put everything on an even basis so that every department could come out at the end with neither a profit nor a loss. It is an internal separation—

Q. Now, that doesn't answer my question at all.

The Court: Wait a minute. Let the witness conclude, Mr. Grigsby.

The Witness: It is an internal breakdown for the benefit of the management for the better control and analysis of the income and expenses of the Association. In other words, any of these—we are attacking these reports as if they were a cost accounting system.

The Court: What did you say, attacking?

The Witness: We are tearing these apart; we are questioning them, as whether or not that this allocation of \$25,000 is every [91] penny or every dollar that was in a certain place. That's why I can't answer those questions definitely.

Mr. Grigsby: I can understand that you can't, Mr. Allyn, and I have asked you to find out where that \$42,000 went. Now, I want to know—

A. Now, you are asking a question on cost accounting by this department that they—

Q. Well, I don't care anything about cost accounting.

A. May I finish, please? That accounting system was not a cost accounting system. It was not designed to give a figure of that nature. That's why I say—and the physical mechanical work involved

(Testimony of Marvin Allyn.)

will be to go back into the warehouse, into the vaults, and find those old vouchers and analyze them to get back to this figure. That isn't a cost accounting figure.

Q. Now, Mr. Allyn, will you please answer my question? You have a sum set down here of \$83,-807.54. It is set down as the operating expense of the dairy and creamery for 1945. You have here the operating expense of the meat unit, of the produce unit. Now, all those sums set down here are the direct expense of running those particular units without regard to the miscellaneous indirect overhead in these items. This item of \$83,807 is what it cost to run the dairy and creamery unit, isn't it?

A. They—the certified—the public accountant was satisfied and certifies that that was the case.

Q. Well, do you know whether that was the case or not?

A. From personal knowledge, no. I wasn't here. [92]

Q. Does this book purport to set it down as what it cost to run the dairy and creamery unit?

A. Yes.

Q. All right, then, that includes all the cost of receiving, handling and selling of the milk that they bought of the dairymen, doesn't it?

A. Expenses that were directly attributable to that.

Q. Yes, it includes hauling the milk to Palmer, doesn't it, from Palmer to Anchorage?

(Testimony of Marvin Allyn.)

A. Yes.

Q. And it includes pasteurizing it here in Anchorage? A. Yes.

Q. It includes every expense there is connected with the handling of that product? A. No.

Q. Well, what expense connected with the handling of that product does it not include?

A. That product requires a certain percentage of your manager's salary.

Q. But that is charged elsewhere, isn't it?

A. Yes.

Q. Under the head of indirect overhead?

A. Yes; therefore, this isn't all the expenses.

Q. But this is all the direct expense connected with that unit, isn't it? A. All right, yes.

Q. You have got this \$32,000 set down here for salaries connected with that unit? A. Yes.

Q. The salaries of the co-op—the manager and all those other departments — is charged — apportioned to the dairy unit elsewhere in these books, isn't it, under the head of indirect overhead?

A. Yes.

Q. Now, what page is that indirect overhead?

A. That is [93] Schedule 9, I believe. It should be the next page from your operating expense.

Q. Schedule 9 — it isn't apportioned?

A. Yes, Schedule 9, on Page 22, is your indirect overhead.

Q. Schedule 9 on Page 22 doesn't give the apportionment to the dairy unit of the indirect overhead?

(Testimony of Marvin Allyn.)

A. That is spread on the basis of sales.

Q. Yes, but it isn't on Page 22 under Schedule 9. There is Page 22, Schedule 9.

A. Well then, let's — that's the totals of all your — here is the way — "Indirect Overhead Prorated," if that's the one you want — it is on Page 19.

Q. Exhibit B—now, on Page 19: Mr. Allyn, the indirect overhead consists of the power house expense, the cabinet shop expense, and the general and administration expenses. That includes the salaries of running the whole enterprise and the general expenses of the whole enterprise? Now, that's apportioned to the different units in proportion of the amount of business each unit did, isn't it? That is total sale? A. That is right.

Q. For instance, there is charged to the dairy unit, \$12,220.44 of the power house expense, \$9,521 of the cabinet shop expense and \$23,378 of the general expense — that's apportioned? Do you know what percentage of the total expense they are charged with? A. The creamery-dairy?

Q. Yes; something like 33, is it?

A. I don't know; I would have to look it up. (Mr. Grigsby handed book to the witness.) [94] In this report it is not shown in the total. It is in the—the indirect overhead is shown by three breakdowns.

Q. Well, there is a sheet there that shows percentage to— A. I take it that this—

Q. Would it be the percentage that the total re-

(Testimony of Marvin Allyn.)

ceipts for dairy production bear to the total receipts for all sales? A. That is right.

Q. That would be — the total receipts for all sales being \$1,091,439.21, and the total receipts for dairy production being \$361,145.56, they could be charged with \$361,145.56 — that fraction which would result in something over along about 33%, wouldn't it?

A. Well, I can't follow you through that.

Q. Well, suppose their sales amounted to a third of the total sales, then they would be charged with a third? A. Yes, that is right.

Q. It would be on that basis?

A. That is right.

Q. That is just an arbitrary figure they set down as being fair?

A. All the way through in all these separations it was to arrive at the fair and equitable distribution.

Q. Yes, I realize that. All right, now, the indirect overhead is set down in your books and on this statement as all the indirect overhead \$128,653.39? Do you remember that as being about the figure?

A. I don't, but if it is on there, it is correct.

Q. \$128,000 — that's for '45?

A. Yes, that should be the [95] total of those three columns in the audit report.

Q. And under the head of "Operating Expenses" there is \$246,888 total for everything — all the units? A. Uh-huh.

(Testimony of Marvin Allyn.)

Q. Including \$83,000 charged for operating expenses for the dairy-creamery? A. Yes.

Q. Now, that's all expense, isn't it?

A. That is all expense.

Q. Of the whole co-op?

A. These two together, yes.

Q. And in arriving at what purports to be the net profit of the dairy, their operating expense, to wit \$83,000, and their share of the indirect overhead, \$45,121, is deducted?

A. That's '46 you are looking at.

Q. '45.

A. All right, '45. The dairy-creamery's share of the indirect overhead, plus their share of the operating expenses—

Q. No, plus their operating expenses? Plus their actual operating expenses? The operating expenses weren't apportioned on a percentage—?

A. That's while — well, we will agree to that, if it will add up—

The Court: Court will stand in recess until 1:30 this afternoon.

(Whereupon recess was had at 12:00 o'clock noon.)

Afternoon Session

The Court: You may proceed when you are ready.

Mr. Grigsby: May I have that Exhibit No. 3, I think it is?

The Court: I think I have them all here.

(Testimony of Marvin Allyn.)

The Witness: You should find the same figures on the book. [96]

Mr. Grigsby: I know they are taken from here, but for convenience—

Mr. Davis: 17, 18, 19, or something like that are the pages you were asking about this morning.

Mr. Grigsby: Well, I have the figure here, on Page 17, being Exhibit B, Mr. Allyn, under the head of "Cost of Goods Sold," is the item charged to dairy and creamery, \$178,422.88, and it has been testified to that 136,000 and some odd dollars was paid to the dairymen for milk, and I left you the balance there to look up of something over 42,000. However, that sum of \$178,422.88 includes commodities that went into the product that was sold, whether it was a processed product or raw milk it can't consist of anything except material that was sold. In other words, it don't include anything besides milk, cost of powdered milk and any extracts that went into the ice cream — that's vanilla sugar — it includes stuff that went into food that was sold, is that right?

A. In conversation with members of the Association during those years, and with former general manager, they believe that to the best of their recollection that in your supply figure of \$25,000 that there were some other supplies such as sugar and butter and eggs in the supply figure, so that your cost of goods sold there would include not all of the actual cost of the manufactured products. In other words, during the inventories, an inventory

(Testimony of Marvin Allyn.)

of supplies may have contained — they recollect that it contained part of the sugar, for instance. It might [97] have included some of the egg powder. So that you may have some of the costs of the finished product also allocated to the supplies. Now, I don't mean to say that there is any duplication, but—

Q. Do you know that there wasn't any?

A. Absolutely.

Q. How do you know?

A. Because these were audited and checked for exactly that sort of error by the public auditor, and he certifies that to the best of his knowledge and belief, and after spending two months checking these books as an independent auditor, he is willing to certify that these separations are correct and there is no duplication.

Q. Well, is there a certificate attached to this?

A. I think it is your first page. It will be the second or third page.

Q. Now, the final paragraph of the certificate signed by Neill, Clark and Company — not by any agent, but by the words “Neill, Clark and Company:”

“Subject to the comments contained herein, and in conformity with the system of accounting consistently maintained by the Association, we certify that, in our opinion, the accompanying balance sheet and related statement of profit and loss fairly present the financial position of your Association as

(Testimony of Marvin Allyn.)

at November 30, 1948, and the income for the fiscal year so ended, respectively.

“Yours very truly, [98]

“Neill, Clark and Company”

That is the certificate you allude to?

A. That's right.

Q. Now, you say that after talking with some of the gentlemen here, including members of the Board of Directors, they are of the opinion that the item of 24,000 and odd dollars charged to supplies for the dairy department could have included some such things as sugar and any part of the powdered milk?

A. It could have, yes.

Q. Eggs?

A. Powdered eggs — not eggs purchased from the farmer.

Q. Not from the farmer? A. Oh no.

Q. But it could have included some part of what went into the finished products?

A. Yes, that is right.

Q. That was mostly ice cream, wasn't it?

A. Finished product?

Q. Of the creamery down there?

A. Ice cream, ice cream milk, are—

Q. Mix? A. Mix—are the largest.

Q. Then this item of \$178,000 which is listed as the cost of the goods they sold would also include the cost of powdered milk, wouldn't it?

A. It would include the amount that we used other than which would have been included in the other supplies expense, if any was included.

(Testimony of Marvin Allyn.)

Q. In other words, they have charged a part of the powdered milk to operations under the head of supplies and part of it to the cost of goods sold? A. That might have happened, yes. [99]

Q. And you don't know in what proportions?

A. No.

Q. There is no way of ascertaining that, is there?

A. There is by comparison of the supplies expense of the various years to see if your—

Q. That's the thing that would be so hard to find? A. That is right.

Q. Anyway, this \$178,000 listed as "Cost of Goods Sold" can't include anything else except the cost of edibles, can it? It includes \$136,000 for milk, and then it includes amounts paid for other commodities which are re-sold, doesn't it?

A. That is the best accounting practice, yes.

Q. What I am getting at is it doesn't include any production expense? It doesn't include anything except what was sold, does it?

A. No. It should include—it should include—under cost accounting it would include the cost of the product at the time it was sold. This not being a cost accounting system is the reason why in the separation that you may have the same item of expense. For instance, you might find that during that year they had ice cream cartons — part of it may have been charged in with the cost of goods sold as part of the finished product, whereas part of it may be carried as supplies. It is one place or the other; it isn't both.

(Testimony of Marvin Allyn.)

Q. Well now, how do you know it isn't both? Neill, Clark and Company couldn't tell whether it was both or not, could they?

A. Oh, indeed they can. They have done it.[100]

Q. Well now, this item of \$178,000 that is marked as cost of goods sold includes eggs, too, doesn't it?

A. Yes.

Q. That includes all the eggs they bought of the farmers, doesn't it? A. Yes.

Q. Is that a part of a dairy product?

A. No. It is a part of the earnings of that department—the profits made on eggs.

Q. What department?

A. Dairy. It is included in there for convenience according to his managerial separation by departments. It is in that \$57,000.

Q. In other words, there is no egg department?

A. No.

Q. So they put the egg department in the dairy department? A. That's right.

Q. And part of that \$178,000 includes what was paid for eggs which are sold as eggs?

A. That's right.

Q. And can you ascertain what part of that went for eggs, in '45?

A. That can be ascertained, not from my record here.

Q. No, but you could get that very readily?

A. That is right. Of the sale price, I can tell you what the sale price of the eggs were.

Q. Can you get what the cost of the eggs was?

(Testimony of Marvin Allyn.)

A. I haven't that here. That can be gotten.

Q. Yes, well, \$178,000 is listed here as the cost of all goods sold for the dairy unit? That includes all they paid for milk and all they paid for eggs, and part of what they paid for powdered milk and part of what they paid for sugar, but not [101] necessarily all of what they paid for sugar?

A. That is right.

Q. Some of it might have been included in cost of supplies?

A. That is right, and the same thing with your cartons—may or may not appear part in one breakdown or the other.

Q. Well, cartons, also, if that was possible, they could have charged bottles to it, couldn't they?

A. That is right.

Q. Do you know whether they did or not?

A. No, I don't.

Q. And if they did charge bottles to cost of goods sold, would they charge part of the bottles and then charge part of the bottles to supplies, both?

A. It may have been done. It's all a part of the expense and—

Q. Well, can you explain why, if the co-op had to buy a certain amount of powdered milk to use in the manufacture of ice cream, in their book-keeping system they would charge a part of it to supplies, part of the powdered milk to supplies and then a part of it to the cost of goods sold?

A. Yes; yes.

(Testimony of Marvin Allyn.)

Q. Why?

A. You start your accounting period with an inventory of supplies which would include the sugar or any particular item of expense for supplies — I shouldn't say expense — supplies. Then you have your purchases of that commodity during the year. At the end of the year you deduct your inventory, during your inventory adjustment. The difference between your beginning inventory and your ending inventory, very conceivably could have been put in "supplies," whereas during your current purchases during the year could have been charged direct to the [102] dairy.

Q. Well then, for instance, if you had some powdered milk left over, which is included in the inventory, that was purchased in the year '44, and that's on hand for the fiscal year '45, that might be charged to supplies, is that what you mean?

A. No, it would only be a difference between the beginning and the ending, yes.

Q. Well now, that left-over powdered milk that you have had there in your inventory after the '45 operations was purchased during '45, wasn't it?

A. Yes.

Q. Then when you begin the year '46 that surplus would be charged to the supply item for '46, wouldn't it? Is that what you mean?

A. That's right. Each year stands on its own.

Q. Well then, they would have in the fall of '44 there might be a surplus of powdered milk

(Testimony of Marvin Allyn.)

left over at the conclusion of the year's operations?

A. That is right.

Q. And you start off the year '45, which is in question, and that would be charged as supplies for the year '45? You said with relation to '46 and '45 that would be true, now that would be true with reference to '45 and '44, wouldn't it?

A. Yes.

Q. But it is charged as a purchase in '44, isn't it?

A. Now, if I follow you, the amount which is actually used in the manufacture is charged to the particular year. What you have at the end of the year is transferred to the year in which it is actually used, regardless of when it was purchased. That year, [103] if it was purchased and on hand, that year's operations are given credit for.

Q. Now, let me start over: Suppose you start running that creamery down there in January, '44, and you have to have some powdered milk and you buy it and pay cash for it. Now, that is entered as costs of goods that you bought, isn't it—goes in the book somewheres?

A. (Witness nodded.)

Q. Now, when you sell that product you put in the item the cost of the goods, of that powdered milk? That all goes in there, doesn't it?

A. Yes.

Q. All the powdered milk you bought in your first year's operation is charged as part of the cost of the goods sold? . A. Yes.

(Testimony of Marvin Allyn.)

Q. Then you got some of it left? A. Yes.

Q. It has all been charged once and then you charge it again the next year as supplies?

A. No, you don't.

Q. Well, that's what you said you did.

A. Well then, I didn't follow your reasoning.

Q. Well, you can get what part of that \$42,000 went for eggs, can you? A. Yes.

Q. And that includes eggs that were brought here as eggs and sold as eggs, doesn't it?

A. That is right.

Q. There weren't any fresh eggs mixed with the ice cream, were there?

A. No, not to my knowledge.

Q. However, you couldn't without some time, find out what [104] the powdered milk bought for that year? That would take a little research?

A. That is right.

Q. And the sugar?

A. Yes. It would take considerable research because those records are in storage. You have to go back to the originals.

Mr. Grigsby: Is Mr. Brunelle in the office?

The Court: He is not, sir, and it may be that the exhibit is on my desk, although I do not recall having seen it today.

Mr. Grigsby: It is hard for—

The Court: Court will stand in recess for about three minutes while I make a search.

(Whereupon recess was had at 1:55 o'clock p.m.)

(Testimony of Marvin Allyn.)

After Recess

The Court: I have been unable to find the missing exhibit and I do not see that it could have been lost in my office.

Mr. Grigsby: Your Honor, the exhibit has been taken off these sheets and it is not irreparable.

The Court: I remember it distinctly because it had one column for 1945 and one for 1946 and I think Mr. Davis suggested the 1946 part was not admissible.

Mr. Grigsby: Well, your Honor, here it is.

The Court: Very well.

Mr. Grigsby: Have you any way of ascertaining from the books of the corporation, Mr. Allyn, taking the figures \$57,001.58 as the net profits of the dairy unit, what proportion of that [105] profit was earned by the creamery?

A. Accurately, no. It can be—it has been done in past years on a basis which had the approval of the dairymen and the Board of Directors. It was done—

Q. For '45, was it?

A. The calculation in '45 was made. That is not approved by the dairymen.

Q. Not approved by the dairymen? Is that in your possession down there now — that calculation?

A. I have some notes on that.

Q. Can you state now from the stand the amount of profit in dollars and cents that the creamery made?

(Testimony of Marvin Allyn.)

A. A separation on the same basis—a division of the \$57,000?

Q. Yes.

Mr. Davis: You had better let him get his notes, maybe.

Mr. Grigsby: Yes, he can do that. I just wanted to know if he could do it.

(Witness procured his notes.)

The Witness: On the basis of the calculations made for the year 19—, fiscal year 1944—profits or earnings of the creamery I determine to be \$20,457.87, and of the dairy \$36,543.71.

Q. That's for '44?

A. That's for '45, following the same calculations — same basis of calculation — as was acceptable in 1944.

Q. But you haven't figured it up except on the basis of '44? For '45?

A. That's right, because the accounting system is, as I pointed out, is not a strict cost accounting system. [106]

Q. I understand, but in '44 what was the profit? You figured '45 on the basis of '44 and say there is a profit to the creamery of some \$20,000. What was the profit in '44? Well, can you say whether it was about the same or not?

A. In '44 it was more. In—

The Court: Before you go into that: You have used two words here, dairy and creamery. I think

(Testimony of Marvin Allyn.)

I understand dairy; what does the word creamery cover?

The Witness: The creamery is the Palmer creamery, including the profit on production other than milk—other than raw milk.

The Court: That would include eggs and ice cream?

The Witness: Eggs and ice cream.

The Court: All right, go on.

The Witness: I would like to repeat: This was what was considered to be, and was accepted by all parties, as the fair and equitable separation.

Mr. Grigsby: In '44?

A. Yes. Of necessity it is arbitrary.

Q. Very well, now——

The Court: Now, let me see; just a minute. The basis of it is what was arrived at in '44, but these figures you have given me apply to '45? You have taken the '44 formula and applied it to 1945 and you come out with the creamery \$20,457.87 and the dairy \$36,543.71, is that correct?

The Witness: That is right.

The Court: You simply take the 1944 formula and apply to '45 [107] and get these figures?

The Witness: That is right.

Mr. Grigsby: Well, the formula for profits of the creamery: You would have to list the cost of anything they bought that was processed there—that would be one item there, wouldn't it? They bought powdered milk. Now, that would enter into

(Testimony of Marvin Allyn.)

it, wouldn't it? And had on hand some and you would figure that at the cost price?

A. Well, let me explain—

Q. Wait a minute, before you explain: Can you answer that? Would it include—in figuring the profits of the creamery down there, would you figure what the stuff cost that you bought that went into their product? You would, wouldn't you, and what it sold for?

A. That is right.

Q. That would include the cost of powdered milk, wouldn't it? A. That is right.

Q. Well, now, do you know what proportion in dollars of what you bought that went into the article that was sold—for instance, ice cream—was bought from the farmers? Was that segregated?

A. No.

Q. That isn't segregated?

A. The separation was made on the basis of the proportion of sales of milk and cream as to all other production of that department.

Q. Yes. All right, now then the proportion of profit: How was that arrived at? Was that in proportion to the proportion of sales?

A. In the same proportion. [108]

Q. So, you figured the profit must have been in proportion to the sales? A. That is right.

Q. That wouldn't necessarily be so, would it?

A. No. It must be—it was acceptable arbitrary formula.

Q. Well, as far as you know from anything

(Testimony of Marvin Allyn.)

you have here you don't know that the creamery made any money in 1945, do you?

A. Or the dairy—we know that together——

Q. Together they made \$57,000? A. Yes.

Q. But you don't know what part of that the creamery earned? A. No.

Q. Nor that it earned any part of it?

A. That's right.

Q. This year they have started a new system down there so as to a year from now you will probably be able to give those figures on it?

A. That is right.

Q. You have inaugurated that new system yourself? A. That is right.

Q. Because they had no system before that of segregating that proportion?

A. That is right.

Q. Now, according to your books here, from which you took this sheet — Exhibit 3 — they advanced the Produce Department — that would be for vegetables, I understand—\$76,976.05, is that correct? (Handed paper to witness)

A. \$76,000, cost of goods sold, yes.

Q. That is the cost of vegetables, isn't it?

A. Yes.

Q. That wouldn't include eggs?

A. No; no.

Q. That wouldn't include eggs?

A. No; no. [109]

Q. That's what the farmers grew and sold to the co-op, isn't it? A. That's right.

(Testimony of Marvin Allyn.)

Q. Now, the sales of all that were what amount there? A. \$101,697.97.

Q. Now, that \$76,000 marked here as cost was all paid to the producers, wasn't it, down there at the Matanuska Valley—farmers, for vegetables?

A. I believe so, yes.

Q. They didn't buy any anywhere else?

A. It would have been nominal if there was.

Q. Yes, and so they advanced or paid, or put it anyway you want to, they advanced the farmers 75% of what they ultimately got for their goods, didn't they? \$76,000—approximately 75%?

A. That is right.

Q. They made a gross profit over and above the cost, which is \$76,000 and the sales price is \$101,697—of \$24,721?

A. \$24,000, yes, gross profit on sales.

Q. But the operating expense of the Produce Department was \$40,045 and indirect overhead \$4995, so that they lost \$20,000?

A. —\$319.12.

Q. Now, they advanced the dairymen, according to your figures this morning, something over \$136,000? A. That is right.

Q. Which would be about 35% as compared with 75% they advanced the farmers, is that right?

A. It is comparing the same figures for the different departments.

Q. Now, do you know, having overpaid the farmers for '45 the [110] sum of \$20,319.12, is that now

(Testimony of Marvin Allyn.)

charged against those farmers? Do they owe that money? A. No.

Q. Is that an indebtedness cancelled? How do they adjust that?

A. That is absorbed by the Association.

Q. Is that absorbed by this \$57,000 profit?

A. No, it is absorbed by the Association as a whole. In other words, the separation of this entire operation of all departments which yielded net for the year of \$2,889—that is the amount that was determined that in that department—for some reason that department was not productive—did not make an earning for the Association. The other places the Association did have earnings, and so that you would know where you were losing and where you were gaining, that is the figure that was arrived at from such records as were kept as to the net loss of that department.

Q. But they paid the farmers for their produce \$20,319 — more money than they got for the produce — added to what it cost to handle it?

A. That's right.

Q. They got \$101,697.97 for the farmers' produce? A. That's right.

Q. And it cost them \$40,045.42 to handle that—operating expenses?

A. That's right. It's the difference between—

Q. And their share of the indirect overhead is \$4,995.62, so they paid them \$20,319 too much, didn't they?

A. The members were paid for a certain amount

(Testimony of Marvin Allyn.)

of produce. All the produce that was brought in, the Association paid so much for that produce. You [111] have a shrinkage; you have spoilage—all your operating——

Q. Well, you lost money?

A. And they lost that much money.

Q. Well, they paid them \$20,000 too much to break even? A. That is right.

Q. Of course, maybe you aren't familiar with it, but take the potatoes, for instance: That isn't a daily crop item, is it? A. No.

Q. That is one crop a year?

A. That is right.

Q. In this Territory, and that's in the fall? And they have what you call new potatoes?

A. That is right.

Q. And they are brought here and sold on the market? A. That is right.

Q. Now, do you know what they advanced the farmers on new potatoes? A. I don't know.

Q. Do the books show?

A. I—of course, it is in the books.

Q. Well now, new potatoes, brought by the farmers, delivered at Palmer and then brought and marketed here in the way they do market, it is sold by the stores—there isn't much other handling is there? There is no storing or grading of new potatoes, or do you know?

A. There would be sorting, grading, packaging.

Q. Of new potatoes?

A. Oh yes. They all must be graded; they must

(Testimony of Marvin Allyn.)

be cleaned; they must be sacked and marked; they must be transported; they must be held for a short period of time.

Q. And then the balance of the crop of potatoes is stored and put in the warehouse and graded and sold from time to time during [112] the winter. Because it costs more to handle that that is sometimes re-graded, isn't it? A. That is right.

Q. Now, do you know that it is the custom, or was it the custom in 1945 to advance the farmers \$4.00 on new potatoes where the market price was five, and that they held out 20% for the cost of handling those potatoes?

A. I can't answer that question. I don't know.

Q. So that, anyway, they could anticipate, could they not, what the costs of marketing new potatoes would be? They know what's necessary to be done to handle new potatoes right away?

A. I think so.

Q. Of course, you don't know anything about any agreements that were made as to the final price for products because you weren't here?

A. That's right.

Q. Is this audit accepted by the corporation as a true audit of their operations for 1945?

A. It is.

Mr. Grigsby: We offer it in evidence, your Honor.

The Court: Is there objection?

Mr. Davis: No objection.

(Testimony of Marvin Allyn.)

The Court: It may be admitted as Plaintiff's Exhibit 6.

(Plaintiff's Exhibit No. 6 admitted in evidence.)

Mr. Grigsby: I believe the copy, your Honor, can be the one marked as an exhibit. They are both the same, are they not?

A. They are just the same. [113]

The Court: That may be admitted as Plaintiff's Exhibit No. 6.

Mr. Grigsby: That's all.

The Court: Do you wish to examine, Mr. Davis?

Mr. Davis: Yes, your Honor.

Cross-Examination

By Mr. Davis:

Q. Mr. Allyn, you are the Chief Accountant and General Manager at the Palmer co-op?

A. That is right.

Q. And you have been there about two months now?

A. About two months.

Q. What is your background, Mr. Allyn, for this sort of work?

A. An agricultural college major in agriculture cooperative marketing, seminar work in cooperative marketing, a short period with the Farm Credit Administration visiting cooperative associations for the bank for cooperatives, and employment since 1937 in the Whatcom County Dairymen's Association, in Bellingham, Washington.

(Testimony of Marvin Allyn.)

Q. And that was from 1937 for what period?

A. With the exception of military service, until the 15th of January of this year.

Q. When did you go in the Army, Mr. Allyn?

A. In May of 1942.

Q. Then you were with the Whatcom County Dairymens' Association about five years—in that neighborhood—1937 to 1942?

A. '42, yes, and then since—then I was back with them for a period before coming to Alaska.

Q. Now, Mr. Allyn, we had a lot of discussion here about the items in that audit on cost of goods sold and the items for supplies. Of course, you didn't, yourself, make the audit and you don't know exactly what items went into either column, but as a matter of fact, does it act any different on the net result as to which column a particular item may be put in? Would you get the same result on your net profit, as long as an item went in one column or another, regardless of which one it went in?

A. No, it would make no difference.

Q. Make no difference at all, as long as the items were reflected there? A. That is right.

Q. And you are of the opinion, since this audit was made by a recognized accountant, that he did audit and find that there are no duplications, is that right? A. That is correct.

Mr. Grigsby: We object to what his opinion is as to what was found.

(Testimony of Marvin Allyn.)

Mr. Davis: You brought it out, Mr. Grigsby.

The Court: Overruled. You may answer. He has answered.

Mr. Davis: Now, this item of \$83,000 expenses of the Dairy Department: I may have misunderstood you this morning, but I thought you said something about that item being proportioned?

The Court: Being what?

Mr. Davis: Being proportioned with some other department. Now, I want to know what that item of \$83,000 plus is. Would [115] you like to have a copy of the audit?

A. No; no, I am—that should be the expenses which they could attribute directly to the operation of that department.

Q. Those are the direct expenses of that department?

A. Yes, insofar as they could—within the limit of their accounting system.

Q. Now then, the other item—the indirect overhead—would you tell us what that includes?

A. That would be expenses other than these which they could apportion directly.

Q. And is it possible that some of the items which are called indirect overhead here are actually direct expenses of the department but can't be ascertained from the books?

A. That could be, yes.

Q. I call your attention particularly to the steam that the dairy might have used. That would be,

(Testimony of Marvin Allyn.)

if it could be segregated, would be a direct cost of the dairy, wouldn't it?

A. That is right.

Q. Then why is that put in indirect overhead? Can you explain that to the Court?

A. The dairy and creamery are in one building; your office administration building is another building; your warehouse is another building. But, for example, the administration building: The dairy has got to carry part of the expense of the steam for the administration building—that would be an indirect expense to the dairy as their share.

Q. In other words, then, that steam is used by various departments and there is no way of determining just how much of [116] it goes to the dairy, is that right? A. That is true.

Q. And when you add together the direct overhead, the direct expenses, and the indirect overhead of this particular department, then you come to the cost of selling the goods, is that correct?

A. That's right.

Q. I think this morning Mr. Grigsby asked you whether or not that figure, then, the cost of selling the goods, would be the item in the contract—item number (b) of Sec. (7) of the contract says:

“reasonable charges for the services of receiving, handling and selling said agricultural products under Paragraph 5 of this Contract;”

Now, is that necessarily true that the cost of selling those goods is the reasonable—is a reasonable charge for handling the goods?

(Testimony of Marvin Allyn.)

A. I am of the opinion that it takes the entire Association, the maintenance of the whole Association and operation of the whole unit to handle all of the products of the community.

Q. Now then, what I wanted you to answer, is the cost of selling the commodity necessarily a reasonable charge for handling that commodity?

A. I think not.

Q. Quite likely to be some other expenses that might have to be met, aren't there, in this co-op?

A. That is right.

Q. I think you testified that so far as you can tell from the books, that the indirect overhead has been proportioned according [117] to the proportion that the total sales of the Dairy Department, insofar as the Dairy Department is concerned?

A. That's right.

Q. The total sales of the Dairy Department to the total sales of the entire co-op? Now, is that correct? A. That is correct.

Q. Now, I notice in going over the figures that so far as the Produce Department is concerned, the indirect overhead is based on a 5/12's basis. Are you acquainted with the reason for putting the produce in indirect overhead on a 5/12 basis rather than a 12/12 basis?

A. My understanding is that it was done some-time ago on the theory that the Produce Department operates five months of the year, or 5/12's of the total year.

(Testimony of Marvin Allyn.)

Q. And, therefore, the indirect overhead is proportioned on that basis, is that right?

A. Yes, that is my understanding.

Q. Now, let's go back a minute to this figure of cost of goods sold. Now, as an accountant when you are setting up cost of goods sold, as a matter of fact you take first an inventory of the preceding year, don't you, at the beginning of the year?

A. That's right.

Q. You add to that all the purchases during the year in question, is that right?

A. That's right.

Q. Then you subtract from that the inventory on hand at the end of the year?

A. That's correct.

Q. And that's the way you arrive at this cost of goods sold figure?

A. That is correct.

Q. And cost of goods sold in the year in question, of the [118] Matanuska Valley co-op, include milk, eggs, ice cream powder and all supplies that go into the manufactured product, is that correct?

A. It would include those, yes.

Q. With the exception that you said possibly some of the supplies which ought to go in cost of goods sold might have been put in the other column of supplies?

A. That's correct, with that qualification.

Q. Now, normally, would bottles go into cost of goods sold—the cost of purchasing the bottles?

A. Normally it wouldn't.

Q. Normally it would?

A. It would not.

(Testimony of Marvin Allyn.)

Q. It would not? And ice cream cartons might or might not, depending upon the accountant that was handling the job?

A. In my opinion, ice cream cartons would, because they are not re-used.

Q. How about bottle tops—caps? Which item would that go in?

A. They would go into the cost of goods sold because they are not re-used.

Mr. Grigsby: Because what?

The Witness: They are not re-used.

Mr. Davis: Would they go into the cost of goods sold, Mr. Allyn, or into the cost of supplies, because they are not re-used?

A. I would consider them to be properly in the cost of goods sold.

Q. All right. How about cleaning equipment—soap, brushes, things like that?

A. That would definitely be a supply items.

Q. Uniforms for the help? A. Supplies.

Q. Now then, I think the judge brought out the point I wanted [119] to bring out on this calculation you made, but just to be absolutely sure we have got it right, is this breakdown between the creamery and dairy, the 1945 figures, figured according to the same formula used in the 1944 operations?

A. That is correct.

Q. The figures you have used have nothing to do with 1944 at all, is that correct? A. No.

Q. But the way you arrive at the figures is according to the formula used on 1944?

(Testimony of Marvin Allyn.)

A. That is correct.

Q. Now, to get the thing absolutely clear here, will you tell the Court what you consider in the creamery end of this department and what you consider to be the dairy? Let's start off, now: Ice cream, which department would that be in?

A. That would be in the creamery.

Q. And popcicles? A. Creamery.

Q. Malted milk — chocolate milk, I should say?

A. Creamery.

Q. How about eggs? A. Creamery.

Q. Can you think of anything else there that should go into the Creamery Department?

A. Butter—re-sale butter; other supplies, skim milk for feed.

The Court: Did you have any cottage cheese?

The Witness: Not during that year, your Honor. Milk powder re-sold, buttermilk, ice cream mix—

Mr. Davis: Generally speaking, then, with the exception of the eggs—I am talking now about the Matanuska eggs—generally speaking, the Creamery Department is the sale of the manufactured [120] products or the incidental sale of some raw products that would normally go into your manufactured product, is that right? For instance, your sale of a certain amount of powdered milk?

A. That's right.

Q. And then what, in this breakdown, was comprised in the Dairy Department—the dairy branch of this thing?

(Testimony of Marvin Allyn.)

A. Milk and cream and skim milk sold for human consumption.

Q. All right, and you are unable to ascertain from the figures that you have as to whether or not the dairy made all of the \$53,000, or whether the creamery made it all or what proportion either one might have made, is that correct?

A. That is correct.

Q. Or what proportion, for that matter, eggs amounted to in that figure?

A. That is correct.

Q. I used the 53,000 figure because I thought you could ascertain the other 4,000 of the 57. Will you tell the Court what that figure is? What is represented between the figure of \$53,000 on your balance sheet and the figure 57,000?

A. That is the rents from the apartments above the—in the Anchorage Dairy building.

Q. Do you know why those items of rent are carried as being in the Dairy Department?

A. Their geographical location, for convenience—the rents are collected by the personnel of the Anchorage Dairy, the administration is there, and when their funds are transmitted to the accounting office at Palmer they are included [121] as a part of the fund for transportation.

The Court: Is there any accounting justification for it?

The Witness: For their inclusion?

The Court: From an accounting standpoint, is there any justification?

(Testimony of Marvin Allyn.)

The Witness: None whatever.

Mr. Grigsby: What was your Honor's question?

The Court: I say, from an accounting standpoint, is there any justification in carrying the rentals in the dairy and creamery account, and the answer of the witness is "none whatever," as I understand.

Mr. Davis: And that would also go as to the eggs, I suppose? There is no accounting justification for carrying eggs as part of the Dairy Department? A. That is right.

Q. But that is the way it has been done and was done in '45? A. That is right.

Q. And this \$57,000 figure we are talking about, then, includes an item of rent and an item from eggs? A. That's right.

Q. And all the items from the dairy and the creamery, they are all mixed up together?

A. That is right.

Q. However, you can ascertain the amount that is attributable to rent? A. That is right.

Q. The rest of it you can't ascertain?

A. That is right.

Q. And the breakdown you gave Mr. Grigsby is an arbitrary breakdown that was made in 1944 and you followed the same breakdown [122] in arriving at the figures for '45?

A. That's correct.

Q. Mr. Allyn, turn to that audit there which is a copy of Exhibit No. 6, I believe, your Honor?

The Court: Yes, No. 6.

(Testimony of Marvin Allyn.)

Mr. Davis: Now, you told Mr. Grigsby that the Produce Department lost some \$20,000 in 1945. I would like to ask you whether any other departments of the co-op lost money during that year and if so, how much?

A. In the year 1945 the store lost \$10,095.68; the garage lost \$20,331.29; hotel and staff houses, \$2,116.04; meat department \$13,319.08. You said other than produce?

Q. Yes, we have already got the produce figure. Well, you might as well just to get them all there re-mention it.

A. Produce Department lost \$20,319.12.

Q. Now, Mr. Allyn, did some of the other departments besides the milk department make money?

A. Yes, warehouse, \$10,315.62; community hall and fountain, \$1,753.28; dairy and creamery, \$57,001.58, with the qualifications that have been brought out.

Q. I am sorry, did you say with the qualifications—?

A. Yes, of rents—including the rents and the profit on eggs and these others, the Creamery-Dairy Department showed an earning of \$57,001.58.

Q. All right, now then, what was the net result of the operations of the co-op for fiscal 1945?

A. A net profit of \$2,889.27. [123]

Q. Mr. Grigsby asked you something to the effect that it must appear that the produce farmers had been overpaid \$20,000 because that department

(Testimony of Marvin Allyn.)

lost some \$20,000. Now, I am asking you if it necessarily follows that the farmers were overpaid because the department lost money?

A. It doesn't necessarily follow.

Q. Supposing that a lot of potatoes had been bought by the co-op and have been lost by freezing or some such matter, that might account for the loss, mightn't it? A. It might.

Q. Or shrinkage might account for it?

A. It would.

Q. Or, for that matter, failure to sell the potatoes might account for it? A. That is right.

Mr. Davis: Your Honor, at this time I would like to offer the '43—I mean the '44 audit, which is on your Honor's desk.

The Court: Any objection?

Mr. Grigsby: No objection.

The Court: It may be admitted as Defendant's Exhibit No. 1.

Mr. Davis: I haven't identified it yet, but I think everybody knows what it is.

The Court: Well, we can give it to the witness.

(Defendant's Exhibit No. 1 admitted in evidence.)

Mr. Davis: Mr. Allyn, can you tell the Court what this is?

A. This is a copy of the Articles of Incorporation and Code of By-laws of the Matanuska Valley Cooperating Association.

(Testimony of Marvin Allyn.)

Mr. Davis: Your Honor, I would like to offer this—[124]

Mr. Grigsby: What is it?

Mr. Davis: A copy of the Articles and By-laws of the Association.

Mr. Grigsby: No objection.

The Court: It may be admitted as Defendant's Exhibit No. 2.

(Defendant's Exhibit No. 2 admitted in evidence.)

Mr. Davis: Can you tell the Court what the paper I have just handed you is?

A. This is a schedule of the plaintiffs' production—the amount of money claimed.

Q. In this suit?

A. In this suit, and the money paid and deducted for other deductions.

Q. As to each individual plaintiff?

A. As to each individual plaintiff.

Q. Now, Mr. Allyn, did you prepare that paper?

A. No, I did not.

Q. Was it prepared under your direction?

A. It was prepared in the office of the Association.

Mr. Davis: I would like to offer this into evidence, your Honor. (Handed paper to Mr. Grigsby.)

Mr. Grigsby: I have no objection.

The Court: It may be admitted as Defendant's Exhibit No. 3.

(Defendant's Exhibit No. 3 admitted in evidence.)

(Testimony of Marvin Allyn.)

DEFENDANT'S EXHIBIT NO. 3

Cause	Name	Claimed	Pounds Grade A	Pounds Grade B	Money Claimed	Money Paid	Hauling	Mdse. Deduct.	2% S.R.
1.	C. R. Monaghan	.....	119,488		\$ 3,285.04	\$ 7,716.83		\$ 2.05	\$ 157.08
2.	Frank McAllister	.....	168,842		4,497.30	9,948.57	\$ 590.94	16.20	215.02
3.	Merle L. Anderson	.....	130,910	8,656	3,969.78	8,894.92	488.49	16.61	189.79
4.	A. A. Rempel	.....	48,925		1,040.14	2,310.92	172.00	13.30	49.73
5.	Arvid Johnson	.....	95,567		2,686.54	6,061.82	334.48	18.65	128.43
6.	Jack Cope	.....	67,321		1,897.02	4,232.89	235.63	24.75	90.66
7.	William Ising	.....	85,157		2,356.84	6,676.82	1,150.92	31.00	112.67
8.	Joseph Lentz	.....	42,856		1,201.92	2,727.69	64.19	54.10	57.74
9.	Clarence Quarnstrom	.....	33,595		1,095.37	2,435.77	135.50	11.65	52.37
10.	Thomas Moffitt	.....	81,451	1,601	2,274.08	5,140.87	285.08	5.90	109.66
11.	Paul Nelson	.....		36,170	822.57	1,973.40	51.13	23.90	39.35
12.	B. J. Lossing	.....	52,053		1,400.28	3,312.39	182.21	20.00	71.71
13.	Chet Liebing	.....	1,475	36,557	948.19	2,152.13	84.11	21.20	45.32
14.	Alvin J. Collier	.....		9,851	238.06	474.39	84.00		11.41
15.	William Lentz	.....	58,303	4,219	1,711.25	3,757.66	201.19	64.70	81.84
16.	Henning Benson	.....		32,299	723.41	1,729.41		1.90	34.60
17.	Walter C. Huntley	.....	32,236		942.23	2,116.81	135.76	9.90	45.05
18.	Lawrence Plumley	.....		15,790	358.56	820.00		20.00	17.15
19.	H. S. Bauer	.....		6,196	147.69	336.13	7.70	3.00	7.07
20.	A. R. Moffit	.....	63,949		1,851.00	4,104.56	223.83	7.65	88.50
21.	Leonard Bergan	.....		2,643	66.10	167.87	13.06		3.16
22.	Harold Thuma	.....		23,004	551.86	1,180.31	127.35	7.00	26.40
Total.....			1,082,128	176,986	\$34,065.23	\$78,272.16	\$2,137.35	\$373.46	\$1,634.71

(Testimony of Marvin Allyn.)

Attached to the above are adding machine tapes showing the following figures:

78,272.16					
2,137.35					
373.46					
1,634.71					
<hr/>					
82,417.68					
	7,716.83	(Cont.)	2,435.77	(Cont.)	4,104.56
	9,948.57		5,140.87		167.87
	8,894.92		1,973.40		1,180.31
	2,310.92		3,312.39		<hr/>
	6,061.82		2,152.13		78,272.16
	4,232.89		474.39		
	6,676.82		3,757.66		
	2,727.69		1,729.41		
			2,116.81		
			820.00		
			336.13		

[Italicized figures shown in red.]

[Endorsed]: Filed August 5, 1948.

(Testimony of Marvin Allyn.)

The Court: What is the general name of this, Mr. Davis?

Mr. Davis: Your Honor, it is a statement of the account of [125] the milk sold by the plaintiffs, of the amount paid to the plaintiffs in money or by deductions, and of the amounts claimed by the plaintiff.

The Court: Very well.

Mr. Davis: Now, Mr. Allyn, did you prepare that or have it prepared?

A. This was prepared at my instruction.

Q. Can you tell the Court what it is?

A. This is a schedule of milk prices paid to the farmers from December 1, 1941, showing the changes to and including October 1, 1946, for Grade A and Grade B milk.

Q. And also showing the difference on tests, Mr. Allyn?

A. It shows two tests, 4% and a 4.5%, the price and the price calculated for each test.

Mr. Davis: We offer this schedule in evidence, your Honor. (Handed paper to Mr. Grigsby.)

The Court: Mr. Allyn says he has another copy which may be supplied to Mr. Grigsby if desired.

Mr. Davis: I think we have several copies, your Honor.

Mr. Grigsby: Well, is this dollars here?

Mr. Davis: Yes.

Mr. Grigsby: We have no objection.

The Court: It may be admitted as Defendant's Exhibit No. 4.

(Testimony of Marvin Allyn.)

(Defendant's Exhibit No. 4 admitted in evidence.)

DEFENDANT'S EXHIBIT NO. 4

Milk Prices Paid to Farmer

Date	Test	Grade A	Grade B
Dec. 1, 1941	4.0	4.00	2.44
	4.5	4.50	2.74
Jan. 15, 1942	4.0	4.40	2.84
	4.5	4.95	3.20
Above figured by net x test B.F. x 1.00			
	1.10 for grade A		
	x .61		
	.71 for grade B		
Feb. 1, 1943	4.0	5.10	3.75
	4.5	5.40	4.05
Apr. 22, 1943	4.0	6.20	4.85
	4.5	6.50	5.15
Aug. 1, 1945	4.0	6.70	5.35
	4.5	7.00	5.65
Sept. 1, 1945	4.0	7.20	5.85
	4.5	7.50	6.15
Sept. 16, 1945	4.0	7.70	6.35
	4.5	8.00	6.65
May 1, 1946	4.0	6.70	5.35
	4.5	7.00	5.65
July 1, 1946	4.0	6.70	4.00
	4.5	7.00	4.30
Sept. 1, 1946	4.0	7.70	4.00
	4.5	8.00	4.30
Oct. 1, 1946	4.0	8.70	4.00
	4.5	9.10	4.40

Footnote:—There is an increase from summer to winter rates beginning September 1, 1945. From December 1, 1944, thru February 1945 was no increase in rate paid but a winter bonus applied. Bonus—50c per 100 lbs.

[Endorsed]: Filed August 5, 1948.

(Testimony of Marvin Allyn.)

The Court: On that, Mr. Allyn, does Defendant's Exhibit No. 4 [126] embrace all of the payments that were made to the milk producers for those years, or only the initial payments which the plaintiffs here call advances made during the course of the season without any reference to what may have been paid after the close of the year, but on account of milk produced during the year?

The Witness: That is the initial payment regardless of whatever it is called. That was the—that is the price of the milk upon delivery to the dairy association.

The Court: Then if the milk producers were paid anything afterwards, that is not included in Exhibit No. 4?

The Witness: That is not included.

Mr. Davis: That figure, Mr. Allyn, is the figure upon which these bimonthly payments are paid?

A. That is correct.

Q. Have been paid over the period of time?

A. That is correct.

Mr. Davis: That is all, Mr. Allyn.

Redirect Examination

By Mr. Grigsby:

Q. Now, Mr. Davis asked you if you considered the figure 83,000 and some dollars, which is charged as operating expenses of the dairy unit—dairy and creamery unit— was a reasonable charge, and did I understand you to answer that it probably wasn't

(Testimony of Marvin Allyn.)

enough? Is that right? Probably ought to have been more? Did you so answer? Mr. Davis called your attention to Sec. (b) of Paragraph (7)—reasonable charges for the services of receiving, handling and selling—and asked you if \$83,000 would be a reasonable charge for that service—

Mr. Davis: That wasn't my question, Mr. Grigsby; I also added in indirect overhead and asked him if it was necessarily the reasonable charge mentioned in the contract.

Mr. Grigsby: Yes; well, all right. That was one question as to whether you considered that a reasonable charge and Mr. Davis asked you if there might have been other items of expense which would have raised that. Now, do you consider that a reasonable charge, for the service it is charged for? I will withdraw the question.

A. Not necessarily.

Q. Well, it purports, according to the books, to be the cost of the service, doesn't it?

A. Insofar as—yes.

Q. The direct cost? A. Yes.

Q. And then in addition to that, the charges were apportioned in proportion to the amount of business they did of the other expenses, known as indirect overhead? A. That's right.

Q. Now these—what's listed in the books as operation expenses of each unit—added to the indirect overhead of each unit, constitutes all the expenses?

A. That is right.

Q. And there wasn't any other expense? There is

(Testimony of Marvin Allyn.)

no other expense they have been to except under those two heads? The indirect overhead, added to operation expenses of each unit, constitutes all expense, doesn't it?

A. That is the part of the operating expense which it was calculated to be chargeable [128] directly to the dairy and the creamery combined.

Q. Certainly, but there is a certain operating expense charged to each unit, isn't there?

A. That's right.

Q. And there is a certain indirect overhead charged to each unit. Now, all the operating expense charged to all the units, plus all the indirect overhead charged to all the units, is the entire expense of operating the co-op?

A. Except insofar as they neglected to set up reserves for repairs, which weren't made, and make provisions to pay off indebtedness due in the future.

Q. Well, but I am not talking about provisions—I am talking about the expenses of running that thing down there for the year 1945. They are——

A. They are an expense of any business.

Q. Now, my question is very simple and the reason I am asking it is because Mr. Davis said there might have been some other expense which should have been added to this \$83,000. Now, all the expenses chargeable to the year 1945, incurred by the co-op, consist of the operating expenses of all the units, which can be directly charged to each unit separately as you have done in your books, plus their proportion of the indirect overhead. Now, that constitutes all expense, doesn't it?

(Testimony of Marvin Allyn.)

A. May I answer that with an explanation?

Q. Yes.

A. We are getting at the fundamental question before the Court as to whether a cooperative is a collection of individual and separate departments, or whether it is a cooperative organization, [129] and that's I believe, is where this difference is coming in.

Q. But that hasn't anything to do with my question. Mr. Davis asked you if some other expense could be added to operating expenses for handling the goods, other than this \$83,000.

Mr. Davis: That wasn't my question.

The Court: Well, one at a time.

Mr. Grigsby: Well, the record will show that. And that's the only reason I am wasting the time. Do you know of any other expense that was incurred in the year 1945 for running that co-op other than that indirect overhead plus the total operating expenses of all the units? Now, did it cost them——

A. No.

Q. Now, that's what I am getting at. Now, you said there was no justification for including the rents for this apartment down here where the dairy building is as a part of the profits of the dairy. You say there is none? Well, all the expenses of running that are charged to the dairy, aren't they, in those books?

A. In the attempt to find out the net result of handling and processing the milk and other products——

Q. All right, now, here's your dairy business, and

(Testimony of Marvin Allyn.)

they pay so much for a lot down there, don't they, where that dairy is here in town—where the distribution center is? I believe it is testified to here in this place, and you testified to it or heard it, that they paid rent for the lot on which that building sets? That is charged as an expense of the dairy unit, isn't it? [130] A. Yes.

Q. And there was an item of something over \$2,000 for power that's used down there?

A. That's right.

Q. In town here? A. That's right.

Q. And that's charged as an expense to the dairy unit, isn't it? A. That is right.

Q. And the employees' wages down here, that is charged as an expense? (No response.) And then there is a credit of so much for rent of an apartment that is properly charged—it should be charged as a credit to the dairy, unit, shouldn't it?

A. No, I believe not.

Q. Why not?

A. I believe the tenants pay their own light bills. I know for a certainty that they buy their own fuel—that is their cooking gas. The improvements, the money invested to make those apartments habitable, were funds that came from the Association, or an investment by the entire co-op—not by the Dairy Department.

Q. Well, all right, now: Is there any place in your books where any revenue or expense is charged directly to the entire co-op? It is always charged to some unit or credited to some unit, isn't it?

(Testimony of Marvin Allyn.)

A. My understanding is——

Q. Well, isn't it—to some unit?

A. I can't answer that yes or no. At the present time we are charging them by departments. In these years I believe that it was charged—the expense was charged into an account and broken down to departments. [131] It was an expense classification.

Q. Well, what department would you put that rent into if you wouldn't credit it to the Dairy Department? A. Rental income.

Q. Well, is there such a department?

A. It would be shown as an income account from rent.

Q. Well, is there such a department?

A. It isn't a department; it's an account.

Q. Well, there isn't any such department?

A. No, it's a miscellaneous income account.

Q. The dairy is charged with heating that building, isn't it? A. Yes.

Q. It is charged with every expense connected with with that building, isn't it? A. Yes.

Q. Well then, wouldn't it be proper to credit it with everything earned by that building?

A. No.

Q. Very well, now, the operations of the Dairy Department include the cost of handling eggs?

A. It would.

The Court: What is that?

Mr. Grigsby: Eggs.

The Court: I thought that was charged to the creamery.

(Testimony of Marvin Allyn.)

Mr. Grigsby: That's dairy and creamery. The eggs are delivered at the Palmer plant, aren't they?

A. That is right.

Q. And then shipped here and sold as eggs?

A. That is right.

Q. And the expense of handling those eggs is included in that \$83,000? A. That is true. [132]

Q. That is charged to the dairy unit?

A. That's right.

Q. The dairy and creamery consist of one unit?

A. That is right.

Q. And the cost of those eggs is included in the figure \$178,000, cost of goods sold?

A. That is right.

Q. The dairy and creamery?

A. That is right.

Q. Now, may I see that audit of 1945? You have one, Mr. Davis, that is not in evidence?

The Court: Would you mind suspending a few minutes, Mr. Grigsby?

Mr. Grigsby: May we have 10 minutes?

The Court: Court will stand in recess until 18 minutes past three.

(Whereupon recess was had at 3:08 o'clock, p.m)

After Recess

Mr. Grigsby: Mr. Allyn, the total indirect overhead charged to the dairy and creamery, according to your Page 19 of the audit and expressed here on this Exhibit 3 which you prepared was \$45,121.31 is that correct? A. Indirect overhead?

Q. I am correct in the figure?

(Testimony of Marvin Allyn.)

A. Well, whatever the audit report is.

Q. Well, this was taken from the audit report?

A. This should be the same.

Q. Well, it is the same—

The Court: What is the same?

The Witness: 45,000-something for indirect overhead for the [133] creamery and dairy.

The Court: Yes. It is broken down in three figures here.

The Witness: Yes.

Mr. Grigsby: Now, that's 45,000 that you just testified about is made up of \$12,220 charged to the dairy for the operation of the power house, \$9,521.94 to the cabinet shop, and \$23,378.93 to general and administration expenses. Those are the sums that total 45,000, is that right.

A. That should be correct. That was the intention.

Q. Now, what is the 12%? What does that mean there—that 12%?

The Court: 12.494.

The Witness: 12.494, that would be the percent of this 128, I believe.

Mr. Grigsby: That the dairy-creamery is charged? They are charged with 45,000 or more which would be over 30%. Is that 12% of the total sales, perhaps? A. 45—of the 128,000.

Q. Of the 128,000 the dairy-creamery is charged with 45,000? A. Yes.

Q. Which is more than a third, so it couldn't be

(Testimony of Marvin Allyn.)

12% I am just curious to know what the 12% means there?

A. It is some calculation of this total indirect overhead on the basis of—this equals a hundred percent.

Q. They are all charged with 12%?

A. 12.494, with the exception of the Produce Department, who are 5/12. This 12.494 [134] would be the percentage on the basis of sales.

Q. But they couldn't be all the same, then?

A. No, here's your method: The indirect overhead is apportioned to the various departments on the basis of sales, that is correct. And then this is a percentage of—no, that isn't right either. Well, can we go on and come back to this—give this a little study.

Q. Yes, except I am—Now, on that sheet it is stated that the apportionment of indirect overhead charged to the different units is prorated on the basis of total sales? A. That's right.

Q. With the Produce Department standing 5/12's of normal. Now, you have explained that that figure 5/12, means five months out of 12 months of the year. If that is so, what does normal mean there? It is always 5/12's—five months is always 5/12's of a year, but you have got the Produce Department standing 5/12's of normal.

A. The 7/12's—the balance of 7/12's, is there but prorated to the other departments, leaving the 5/12's of the normal figure on the basis of sales left in the Produce Department.

(Testimony of Marvin Allyn.)

Q. Now, do you think those figures, 5/12's—you have just been told that alludes to five months out of the 12 months? A. That is true.

Q. Well, they handle the vegetables all winter, don't they?

A. The storage vegetables, yes, but their activity—it would be during the harvest period for the vegetables. [135]

Q. Well, five months might be the growing season, but while the crop is in the ground there isn't any storage connected with the agricultural product or any expense to the co-op—for the growing of that product?

A. But you have crops being harvested in at successive periods.

Q. Well, the bulk of the vegetables are one crop, aren't they, or maybe two—two crops of cabbage, perhaps, and one crop of potatoes?

A. Well, you start with your small root crops—your radishes, for instance, would be your first vegetable that would be handled, probably, and then your lettuce, celery, beets, carrots, rutabagas, taking different periods for maturity, so that your produce would—

Q. Now, Mr. Allyn, isn't this—in 1944, the sales of the Produce Department—that is, vegetables—were \$268,806.78? A. That's right.

Q. And in 1945, they were \$101,697.97?

A. That's right.

Q. Now, in 1945, they were just about 5/12's of what they were in 1944. Now, haven't they taken the

(Testimony of Marvin Allyn.)

peak year as the normal year as compared with the year 1945?

A. This has no—my understanding is that has no relation to one year as against another.

Q. Well, what does normal mean there?

A. They determined that it would be spread on the basis of sales. Then they thought that in comparison to the Dairy Department, which operates every day—every day of the year—that in the production and handling [136] of produce that most of their activity was limited to a partion of the year. Therefore, it would be unfair to charge them at the same rate as if they were in full production the year round, and I am told that is the reasoning behind this 5/12's.

Q. You were told that by whom?

A. Members of the Association—members and directors.

Q. Can you name the man that told you, any of them?

A. It could be anybody. It's common knowledge; it is accepted.

Q. Do you think that that 5/12's alludes to summer months or winter months?

A. I would say it alludes to the summer months.

Q. Well, isn't it a fact that it is the five months of winter that the principal expense is incurred of the overhead, not the summer?

A. I think not.

Q. Isn't it a fact it is all incurred in the winter months?

(Testimony of Marvin Allyn.)

A. I think not. The expense would be incurred during the receiving and grading and handling and shipping of the fresh produce.

Q. Well, when does that commence?

A. These gentlemen would be better able to tell you; I wasn't here.

Q. Anyhow, this is just what somebody told you?

A. That's correct.

Q. But the apportionment to the dairy-creamery unit is based upon the sales of their products in proportion to the total sales?

A. That's correct.

Q. In other words, it would be approximately 361,000, disregarding [137] the dollars and cents and hundreds?

A. It would be proportion of sale.

Q. And at this time you don't know what that 12% means? Will you make a note of that and see if you can figure that out? Not now; let it go for the present.

A. O.K.

Q. Now, Mr. Allyn, according to your books, and not taking in account the rents received from this apartment down here, there was a loss of \$894.48?

A. Something like that.

Q. And that loss includes the loss in the Produce Department of \$20,319.12?

A. That's right.

Q. And a loss in nearly every other department? For instance, the Trading Post lost \$10,000; the garage lost \$20,000—this is Page 19—and the hotel and staff houses, \$2,116; the Meat Department \$13,000; the Produce Department \$20,319. Now, the only departments that made profit were the warehouse,

(Testimony of Marvin Allyn.)

\$10,315, the community hall and fountain, \$1577 and the dairy, \$53,793, leaving a net loss of \$894. Now, when you apply all those profits to all the losses there is a net loss left of \$894. That's right, isn't it?

A. That's right.

Q. That must be true?

A. That is right before the rent figure——

Q. Deduct all the losses from the profits——

A. Yes, that's correct.

Q. Well, it results in a net loss of 894?

A. That is called an operating loss—net loss from operation. [138]

So, in arriving at that figure of a net loss of the whole thing of \$894, you have applied the \$53,793 net profit from the operations of the dairy-creamery to balance those losses? That is, these books do that?

A. Yes. Or that is the way it was broken down as an explanation of it—we know we had the \$894 deficit, and this is the analysis of what caused that.

Q. Yes. Now, if—suppose that the units here that are marked with the red figures which indicate a loss, had come out even, and the others made the profit they did, then there would have been a profit made by the dairy of \$53,793, wouldn't there, which didn't have to be applied to cover losses? It has been applied to cover those losses, hasn't it?

A. That's an explanation of the net figure.

Q. Yes. All right, now, here is a total loss, which would be the total of those red figures?

A. That's right.

(Testimony of Marvin Allyn.)

Q. And the profits of the dairy have been applied to cover those losses, haven't they?

A. It appears so.

Q. Can you ascertain between now and tomorrow morning what was paid for eggs, which is included in this cost of goods sold? A. In 1945?

Q. Yes.

The Court: Pardon me. Does your question include both eggs bought in the States and eggs bought in the Matanuska Valley?

Mr. Grigsby: No. Were there any eggs bought in the States? A. Oh, yes, for re-sale. [139]

Q. For re-sale?

A. In our Trading Post, where we might have bought some storage eggs to have two grades of eggs; we may have bought eggs.

The Court: Wait a minute. Didn't you buy eggs to put in your ice cream, too? I understood——

The Witness: No, that is powdered eggs—egg powder.

Mr. Grigsby: These eggs included in the cost of goods sold, refer to eggs that are sold here in the market? A. That is right.

The Court: Eggs produced in the Matanuska Valley, is that what you have reference to?

The Witness: Yes.

Mr. Grigsby: Now, that is charged to the dairy and creamery costs of goods sold. Can you get that amount?

A. I can't promise that. I don't know that these detailed records for 1945 were kept by individuals,

(Testimony of Marvin Allyn.)

and it would be—you would have to go through those books. It may be readily available or it may take compilation to get it. I couldn't say now. We will not be there until evening. Before I get back the clerks will all be gone who are familiar with those '45 records.

Q. Do you know where those eggs are delivered when they are brought to the co-op?

A. They are delivered to the creamery building.

Q. They are delivered to the creamery building, and handled from then on? A. That is right.

Q. And all the cost of that operation is charged under the operations of the dairy-creamery, isn't it?

A. That is right.

Q. And all the cost of operating the creamery, including the cost of everything that they buy down there, is all charged to the creamery and dairy, either as the cost of goods or cost of operation?

A. That's right.

Q. There isn't any way of ascertaining, is there, from any record, what proportion of the cost of goods processed down there was paid to the dairy-men here and to the other places that it was bought? They never segregated that, did they?

A. No. Oh, no.

Q. Are you now engaged in creating a system where you can segregate that?

A. We hope to, yes.

Q. You are working on that now, aren't you? That is for the future? A. That's right.

Q. But it has not been done in the past?

(Testimony of Marvin Allyn.)

A. It has not been done.

Q. Now, I want to call your attention to Paragraph (5) which was alluded to in a question put by Mr. Davis:

“The Association agrees to receive, handle by inspecting, assembling, sorting, grading, packing, preserving, canning or otherwise processing, storing, advertising, transporting and other services necessary to prepare for market and sale and to market and resell agricultural products delivered hereunder, together with like products [141] delivered by other members either separately or co-mingled or pooled at its discretion and to pay therefor as set forth in this Contract or cause the same to be done through its Management and Sales Agency.”

Now, I understand that this contract that I have in my hand is made with one individual?

A. That's right.

Q. Now, Mr. Davis read to you that portion of Paragraph (7) of this contract under the sub-heading (b)—

A. Excuse me, may I get a copy of that?

Mr. Davis: You may have mine.

Mr. Grigsby: “(b) reasonable charges for the services of receiving, handling and selling said agricultural products under Paragraph 5,” which I just read to you, “of this Contract.”

This is the question: I call your attention to Paragraph (5) and to this subdivision (b). Now, is it reasonable charge for the services of receiving, handling and selling under Paragraph (5)—is that

(Testimony of Marvin Allyn.)

charge what is expressed by that sum of \$83,000, which you have in your books under the heading of operating expense?

A. That is a legal question. I am not prepared to answer that.

Q. Operating expenses of the dairy and creamery, 1945, \$83,807.54. Now, does that \$83,000 include, according to these books, this audit that you have brought here, does that include [142] the operating expenses of the dairy?

A. I would say so, yes.

Q. Well, does that include the handling of those products that were sold? A. It would.

Q. Now, what you have listed here as indirect overhead is all the other general expenses of the whole co-op outside of what is charged to each unit as operating expenses? A. Yes.

Q. I think that is clear. I think that's all, your Honor.

The Court: Have you any further questions, Mr. Davis?

Mr. Davis: About two, your Honor.

Recross-Examination

By Mr. Davis:

Q. Mr. Allyn, there are, I think, three different, you might say, departments that lost money besides the Produce Department, one of them being the trading post, one of them the garage and one of them the staff houses and the hotel. Now—do the mem-

(Testimony of Marvin Allyn.)

bers of the co-op now use those various facilities that lost money? A. They do.

Q. Do the plaintiffs, themselves, use those facilities? A. They do.

Q. Then if there was a loss it would seem that the plaintiffs themselves incurred part of the loss of those various departments, is that right?

A. In proportion to the amount of business they did with those departments.

Q. Now, have you been able to segregate in any way the amount of those various losses that were incurred by these [143] plaintiffs in those other departments? A. I have notes on that.

Q. Can you get them? (Witness did so.)

A. I have on the basis of the plaintiffs as a group. Will you ask me a question, or what you want?

Q. No, go ahead with what you were saying.

A. I say, I have the proportion of the departmental losses proportioned to the plaintiffs as a group on the basis of the total business that the plaintiffs did with the department in question.

Q. All right, will you go ahead and tell what those figures show?

A. With the trading post and meat department combined, of \$23,414.76 loss the plaintiffs represented 6.09% plus, or \$1427.85.

Mr. Grigsby: How much?

The Witness: \$1427.85. In the garage, 6.72 plus per cent, \$1366.66; with the Produce Department, 10.11 plus per cent, or \$2,054.77. Those are the losing departments. The warehouse, which showed a

(Testimony of Marvin Allyn.)

profit, the plaintiffs are—represent 17.24 plus per cent, or a profit of \$1779.

Mr. Davis: Thank you, Mr. Allyn.

A. That line of figures—that last figure is a profit, not a loss.

Q. Now, I am not certain of the answer to the question I am going to ask. If I am wrong, stop me, but these rents: We had here, now, a net operating loss of the Association of \$894 plus for 1945, and then was added the other item of profit from rents that came in, bringing it up to a net profit for the year [144] of something over \$2,000. Now, what items are included in those rents? Is that all the Anchorage Dairy rent or are there other rents involved as well, or do you know?

A. There are a total of \$576 other than the rent on the Anchorage Dairy included in that figure.

Q. And the Anchorage Dairy makes up the balance?

A. The Anchorage Dairy makes up the balance, or \$3207.75.

Q. And that rent, then, from the Anchorage Dairy and the \$500 from the others, makes a difference between a loss and a profit on net operations of the co-op for the year 1945, is that correct?

A. That's correct.

Mr. Davis: That is all.

The Court: Wait a minute, Mr. Grigsby may have some questions.

(Testimony of Marvin Allyn.)

Redirect Examination

By Mr. Grigsby:

Q. Mr. Allyn, you have on this statement that you furnished plaintiff's rent from the apartments in the dairy building, \$3207. Was that what they received from the Dairy Building?

A. From the apartments.

Q. From the apartments, yes.

A. 3207, I believe that is correct.

Q. Well then, according to that, profits after a net loss of 894, this—the total rents are 3783?

A. That's right. 3200 plus the 500 give you the total rents for the entire operation.

Q. Which leaves a net of 2889?

A. That's correct. [145]

Q. Do you know what that—what was that other rent derived from?

A. It is rent from—\$400 is rental income on the garage and \$176 rental income to another department.

Q. Community hall?

A. Community hall. That would be rental for our gymnasium and community hall.

Q. But in arriving at the figure, \$57,001.58, which is put down here as departmental earnings, net profit of the dairy, that includes the \$3207.75 for the Dairy Department only? A. That is true.

Q. The other 500 isn't included in that at all?

A. That is right.

Q. In other words, there is no attempt here to

(Testimony of Marvin Allyn.)

credit the dairy with the rents except from the dairy building?

A. That is correct. Any of these statements are made in good faith.

Mr. Grigsby: I think that's all.

Mr. Davis: That is all, Mr. Allyn.

The Court: Just a minute. I would like to ask a question or two. I suppose, Mr. Allyn, you are not familiar enough with the past history of the Association to determine whether any specific charge was made against the dairy-creamery account of the Association for the purchase of the building, the rents from which are now credited to the dairy-creamery account?

The Witness: There are none whatever. The improvement, the asset—improvement on leasehold as their title, which are the improvements to this building in Anchorage, are carried on the [146] general ledgers as a part of the Association books. They have no connection with the departmentalization whatsoever.

The Court: Then the milk producers in the past didn't put up the money for that investment?

The Witness: Only in proportion as all other members of the Association.

The Court: Have you here, or can you readily obtain without considerable labor, the total amount received from the sale of milk and cream and skimmed milk for the year 1945?

The Witness: Yes.

The Court: That is the milk sold in itself, you

(Testimony of Marvin Allyn.)

may say, in its natural state and not made up into ice cream or other products of that kind.

The Witness: Of the total sales for the dairy-creamery department totaling \$361,145.56, the dairy in those items which you mentioned—there again that's separation as determined as fairly and as accurately as possible—\$244,290.88, which is 67.644% of the total.

The Court: That is the total of the \$361,145.57?

A. Yes, and the other production for the creamery would be the 32.65 per cent which we credited to the creamery.

The Court: Do you know, or can you tell me, what percentage of the milk produced was sold in its natural state as milk or skim milk or cream, and what per cent went into other manufactured products such as ice cream and other things of that nature? [147]

The Witness: A relatively small amount into ice cream. In percentage I couldn't estimate it, but it would be small.

The Court: In other words, more than 90 per cent of the milk produced was sold as milk, skim milk or cream?

The Witness: I would say so.

The Court: Maybe more than 95 per cent? would you be willing to go that far?

The Witness: I couldn't. This is on the basis of the year before I was even here, but I would expect that to be true.

(Testimony of Marvin Allyn.)

The Court: You would expect it to be above 90 per cent, would you?

The Witness: I would, yes.

The Court: Is there any record that would show you that just by casual inspection? Have you any such record that you know of? Is there any such record in your possession, either here or at home? It isn't important enough to make any long search for it.

The Witness: No, it would be a problem of working back the ice cream formula for the total make for the year and estimating.

The Court: And that would take quite a lot of time?

The Witness: That would take considerable time.

The Court: Now, as a matter of human interest, I am wondering why—it may not be important here, but I am wondering why the Meat Department, for example, was operated so as to show a loss of \$13,319.08? Was there any force or power outside of the [148] Association itself which would compel such a loss, and I ask the question because it would seem to me only good sense and good business to charge enough for the product sold or for the meat sold to make the thing come out even—have you any knowledge of that?

The Witness: I have no knowledge of that. That might be answered by someone else who is familiar—

The Court: The same way with the Trading Post, I suppose: It shows a loss of \$10,095.68, and

(Testimony of Marvin Allyn.)

yet it would seem to one who doesn't know much about it that the thing should have paid its own way, unless the government kept prices so low—that is, the OPA price control.

The Witness: OPA was effective during those years. That is definitely an influence.

The Court: You do not know whether the loss is attributable to the OPA restrictions or not?

The Witness: I do know that there is a considerable amount of inventory in the Trading Post, particularly, which has been there for some time which was bought before the OPA went on and had not moved and would be caught in the squeeze by OPA. The extent of that influence I wouldn't know, but there's some of those products that were there during those years and are still there.

The Court: Well, I understood the OPA rules when applied to Alaska permitted a mark-up over the cost of the goods sold, whatever that cost might be. [149]

Mr. Grigsby: Your Honor, they did in the grocery I patronized.

The Witness: Well, I don't believe I am competent to answer that question.

The Court: The same way with the garage: You just don't know how it happened they lost \$20,000?

The Witness: In the garage I do know that their charges were limited by OPA, that they couldn't increase their—the job cost, whereas their labor cost kept rising until there wasn't enough spread between the labor that was sold and the labor that was pur-

(Testimony of Marvin Allyn.)

chased. The spread just wasn't big enough. But there are others better qualified to answer that than I.

The Court: Well, I presume that there is much less expense in handling and selling milk and cream and skim milk than there would be in manufacturing and selling ice cream and other kindred products.

The Witness: Very definitely.

The Court: I have no further questions.

Mr. Grigsby: I omitted to ask a question. Mr. Davis had you present a paper there showing the percentage of loss of the Meat Department, for instance, which some way you charged to the plaintiffs in this suit. Now, how do you get at that figure? Is that the proportion of their purchases to the whole purchase—to all the purchases?

A. That is correct.

Q. And that loss could be accounted for by the failure to [150] charge enough, or by paying excessive wages? A. Yes.

Q. Or by mismanagement or anything else?

A. Whatever the reason was, yes.

Q. Whatever the reason was, you figure out that each purchaser contributed to that loss by not paying enough to cover it? A. That's right.

Q. And you have charged them with how much in dollars—what percentage?

A. They haven't been charged; this is merely a calculation.

Q. Not charged, but you have calculated them?

(Testimony of Marvin Allyn.)

A. In the Trading Post and Meat combined, 6.09% ; Garage, 6.72% ; Produce 10.11%.

Q. Now, in computing that did you take the total receipts of the Meat Department from all sources, and then take what the plaintiffs bought and take that proportion? Is that the way you did that?

A. It was based on an analysis of the purchases which was made annually in the office—on the basis of the business with each individual and as to the total business of that department.

Q. The total sales? A. Yes.

Q. And their percentage of the total sales was six per cent? A. That's right.

Q. And does that include sales made to non-members of the Association—anybody that went there to buy? A. That's true.

Q. What is that?

A. It would be on the total sales. [151]

Q. Now, the garage, for instance: I am told 50 per cent of their business is done with people that don't belong to the co-op. That's counted in, though, however, is it, in arriving at six per cent for the plaintiffs? A. Yes.

Q. That includes everything?

A. That includes everything.

Q. The Trading Post and the Meat Department is segregated. What is the Trading Post, other staples—grocery?

A. That is a grocery store, hardware store and dry goods store.

Q. It has everything but meat?

(Testimony of Marvin Allyn.)

A. Yes. And the Meat Department has the wholesale slaughterhouse department and also the retail Meat Department within the Trading Post and it is impossible to separate the two.

The Court: May I ask a question there? In your calculations you have Produce 10.11% and an amount of \$2054.77. Will you tell me how that was arrived at?

The Witness: That is, of it 10 per cent of the purchases of produce was purchased from——

The Court: The plaintiffs?

The Witness: Purchased from the plaintiffs.

Mr. Grigsby: That's all.

Mr. Davis: One question, just to clear things up here now.

Recross-Examination

By Mr. Davis:

Q. You say there is a retail Meat Department in the Trading Post? A. That's right. [152]

Q. And when you talk about a loss of the Trading Post, that includes the loss on retail meat, is that correct—if any?

A. No, I think not. This is the year 1945——

Q. Yes. What I am trying to clear up, Mr. Allyn: You have a loss there for the Meat Department. Now, is that the wholesale Meat Department or is that the retail Meat Department that is part of the Trading Post?

The Court: Or is it both?

Mr. Davis: Or is it both?

(Testimony of Marvin Allyn.)

The Court: Or don't you know?

The Witness: I don't know for 1945.

Mr. Davis: Thank you, sir.

Redirect Examination

By Mr. Grigsby:

Q. Does the Meat Department sell meats to anybody at wholesale besides themselves?

A. Oh, yes. They have sold meats in some years, considerable quantities, to the Army.

Q. To the farmers?

Mr. Davis: To the Army, he said.

Mr. Grigsby: Oh, the Army. That's all.

Mr. Davis: That is all.

The Court: That is all, Mr. Allyn. Another witness may be called.

Mr. Grigsby: Mr. Snodgrass.